

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FIVE VOLUMES)

EBNER GOLD MINING COMPANY (a Corporation),

Plaintiff in Error,

vs.

ALASKA-JUNEAU GOLD MINING COMPANY,

a Corporation,

Defendant in Error.

VOLUME III.

(Pages 737 to 1104, Inclusive.)

Upon Writ of Error to the United States District Court of
the District of Alaska, Division No. 1.

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No. 2155

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(Testimony of William M. Ebner.)

Q. Some lawyer drew it?

A. I don't remember whether a lawyer drew it or whether we drew it ourselves.

Q. (By Judge WINN.) Was it a contract?

A. It was a permission I gave him—it wasn't an agreement or [676] contract—it was more in the nature of a permission.

Q. To drive through the Cape Horn lode?

A. The Cape Horn #2 and the Cape Horn.

Q. Which is the Cape Horn #2—is that the claim lying to the southwest of the Cape Horn lode on this map? A. Yes, sir.

Q. And that is the claim on which the stamp-mill was to be built?

A. That I don't know—that is where the excavation for the stamp-mill is.

Q. Did you have any agreement about that, was that in your agreement?

A. I think it touches on that—I wouldn't be sure. We hadn't got that far. I don't think that is in there. He wanted to start a tunnel and I gave him the permission.

Q. Did you ever have any conversation with your attorneys or any one else about that?

A. I don't remember.

Q. You had regular attorneys here at that time?

A. Yes, sir.

Q. Was Mr. Bent here that summer?

A. 1909? I don't think so.

Q. He wasn't up here in 1909?

A. No, sir, not when I was here.

(Testimony of William M. Ebner.)

Q. Can you explain how it is that this suit was brought originally to eject us from the Cape Horn lode in the name of the Ebner Company—do you know anything about that?

A. I do and I don't.

Q. You don't know anything about what influenced your attorneys?

A. Well, my attorneys had instructions to protect the Ebner Gold Mining Company's interests. [677]

Q. And in doing that they brought this suit?

A. Yes, sir.

Q. And until you got here this time, you didn't discover that the suit had been brought in their name for part of your property?

A. I didn't know anything about that until I came here just a few days ago—a week or so.

Q. And the Cape Horn lode, the title to the Cape Horn lode, has never been in the new Ebner Company? A. No, sir.

(By Judge WINN.)

Q. I will ask you who has been acting as attorneys for the Ebner Gold Mining Company here for the past few years, especially since you went south, to California. A. Messrs. Winn & Burton.

Q. I will ask you if you did not give us authority as your attorney to take all actions and steps of every nature and kind to protect the properties of that company up there. A. Yes, sir.

Q. That is the agreement you had with it?

A. Yes, sir.

(Testimony of William M. Ebner.)

(By Mr. SHACKLEFORD.)

Q. I understand you cannot recollect the time, place or persons present when this agreement was drawn up? A. Which agreement was that?

Q. The agreement to allow Mr. Tripp to drive through the Cape Horn lode?

A. I don't remember the time or the place, but I think that Mr. Tripp and I drew that up between ourselves and had some one to typewrite it. [678]

Q. You don't know where it was?

A. I don't know whether it was—no, I do not.

Q. You don't know who typewrote it?

A. No, I don't even know that.

(By Judge WINN.)

Q. What about this permission you gave Mr. Bent?

A. I saw Mr. Bent in Seattle last summer and gave him just a verbal, oral permission to go on there.

Q. You are not kicking about it now and you are consenting to his going ahead and driving through there?

Objected to. Sustained.

(By Mr. SHACKLEFORD.)

Q. Did Mr. Bent come to you and make application for this permission?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Yes, sir, Mr. Bent came to me.

(Testimony of William M. Ebner.)

Q. When was this with reference to your conversation with Tripp?

A. That was after Tripp—I saw Bent last summer down in Seattle, during the month of July.

Q. You stated in your direct examination that the oral permission came first—the oral permission to Tripp?

A. Yes, but that was the year before this understanding with Tripp—that was in 1909.

Q. Before it was reduced to writing you had an oral understanding with Mr. Tripp?

A. Yes, sir.

Q. And then it was reduced to writing? [679]

A. Yes, sir.

Q. Where—here in Juneau?

A. Yes; here in Juneau.

Q. How soon after the oral understanding?

A. Some little time after he came and said he thought we had better. I said, “all right, you understand what we said—now get it down.”

Q. Now, is it not a fact that so far as anybody is concerned except yourselves, these parties have acted all along on the assumption that that was part of the Ebner property and you never gave them any notice of it otherwise? A. No, sir.

Witness excused.

Judge WINN.—I will recall Mr. Behrends.
[680]

**[Testimony of B. M. Behrends, for Plaintiff
(Recalled).]**

B. M. BEHREND'S recalled:

(By Judge WINN.)

Q. How long have you been acting as secretary of the Ebner Gold Mining Company?

A. I think since 1895, since the beginning of it.

Q. You saw the stock-book that I brought up here and offered in evidence in this case? A. Yes, sir.

Q. And the minute-book? A. Yes, sir.

Q. For the last year or so or for the last several years in whose possession have those books been?

A. In mine.

Q. Where did Mr. Ebner get them to-day?

A. He got them from me.

Q. I will ask you whether there is any understanding or agreement with any person or corporation whomsoever, passed by a board of directors of the Ebner Gold Mining Company or otherwise passed for the sale of the real estate and property that belongs to that company?

A. Not to my knowledge.

Q. You have been secretary and have kept the books and transactions pretty well of that company?

A. Yes, sir.

Q. And you have been also a director?

A. Yes, sir.

Q. If there had been any such contract made by the Ebner Gold Mining Company you would have been apt to know of the existence of such contract, wouldn't you? A. Yes, I think so. [681]

(Testimony of B. M. Behrends.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. Your duties as secretary are to keep track of the stock proceedings and affairs of the company?

A. Yes, sir.

Q. You audit the accounts of the company?

A. Yes, sir.

Q. When was the last time you audited the accounts? I will withdraw that. Has the Ebner Gold Mining Company any agreement whatsoever concerning anything with the California & Nevada Copper Company?

A. Not to my knowledge.

Witness excused.

Judge WINN.—We now offer in evidence these three photographs identified by Mr. Winter and been testified about certain stakes and locations both by Mr. Ebner and Mr. Webster.

By the COURT.—They will be admitted.

Judge WINN.—I will call Mr. Wells. [682]

[Testimony of Charles Wells, for Plaintiff.]

CHARLES WELLS, a witness called and sworn in behalf of the plaintiff, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. You have been living in and about Juneau for several years? A. Yes, sir.

Q. What has been your business principally?

A. Well, it is blacksmithing a good deal and prospecting a good deal.

(Testimony of Charles Wells.)

Q. You have been both the owner of mines and have been at work on mines belonging to other people during your stay here?

A. I have done all the work on the mines that the Alaska-Juneau own now for several years—assessment work.

Q. I will ask you if you are acquainted with what has been the going and regular wages paid for the last four or five or six years in Southeastern Alaska, in and about Juneau, in doing and performing assessment work upon mining property, answer yes or no.

A. I think I gave that evidence here about a year ago. I generally pay three dollars a day and board.

Mr. SHACKLEFORD.—We move to strike the answer of the witness.

Motion granted. Stricken.

Q. I asked you if you know? A. Yes, sir.

Q. I will ask you what it has been during that period of time?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial and not the best evidence for the purposes of this case.

Objection overruled. Defendant allowed an exception.

A. Three dollars a day and board is what I generally pay and what a great many others pay.
[683]

Q. Well, has that been the going and market price for services of that kind?

(Testimony of Charles Wells.)

Same objection. Objection overruled. Defendant excepts.

A. Yes, sir, during that time.

Q. (By Mr. SHACKLEFORD.) What is it?

A. Three dollars a day and board.

Witness excused.

Judge WINN.—I think we will rest. We want to offer this map in evidence, Plaintiff's Exhibit "N." If we get any papers here that it is necessary to let counsel examine, if we desire at some future time to offer any evidence concerning such papers as I have indicated to your Honor, I would like to do it.

Recess until to-morrow—June 2, 1911, at 10 A. M.

June 2, 1911—Morning Session.

Mr. SHACKLEFORD.—We want to recall Mr. Tripp for further cross-examination before plaintiff closes.

Judge WINN.—In the amended complaint the only change I desire to make is in the description on page 2 of the Lotta lode claim, wherein we have a course marked as follows: Thence south $57^{\circ} 24'$ east—that should be west—150 ft. to the southeast centre end of the Lotta lode. It is a clerical error.

By the COURT.—You may make the change.

Judge WINN.—Since we have asked to dismiss the third cause of action set forth in the amended complaint pertaining to the Cape Horn lode claim, I move to strike from the answer of the defendant company in this case all that portion of [684] the answer which commences on page 21, as follows:

The defendant for answer to the third cause of action stated in the complaint admits, denies and alleges as follows: down to the prayer of the answer, for the reason that the whole answer is an answer to the stricken portion of the amended complaint—that is, it refers to the Cape Horn claim alone and has no place in the pleadings.

Mr. SHACKLEFORD.—We ask time to examine it.

By the COURT.—You will be given until two o'clock to examine it.

Judge WINN.—On page 2 of the reply in the 6th line on page 2 I desire to strike out right after the word Parish #2 and Cape Horn lode—strike out Cape Horn lode. (Allowed.)

On page 3, in conformity to the motion to dismiss our third cause of action in the amended complaint, I desire to move to strike out “and Cape Horn lode mining claims” and the word “two” and change the word claims to claim (allowed).

Page 3, seventh line, we wish to strike out right after Parish #2 as follows: and Cape Horn lode mining claims. (Motion allowed.)

And on the same line I want to strike the word “two.” (Allowed.)

And in the following line I want to change the word claims to claim. (Allowed.) And three lines below that the word “notices” I want to make it singular—notice. (Allowed.) On page 6, 14th line, I wish to strike out the word “and Cape Horn,” and following that is the word claims again—that

should be claim. (Allowed.) On page 7, 13th line, appears the words—and Cape Horn after Parish #2 and at the end of the next line the word “two.” (Stricken.)

Now, commencing at the top of page 14 is the reply matter to the affirmative matter which they set up in the answer pertaining to the Cape Horn claim. We wish to strike [685] out commencing at the top of page 14, in which it says, “Plaintiff replying to defendant’s answer to the third cause of action,” all of that down to on page 16 where it commences, “And further by the way of affirmative matter as a defense to the matters and things set forth in the amended and supplemental answer to the amended complaint herein, this plaintiff alleges.”

By the COURT.—That portion of the reply on page 14, 15 and 16 is stricken.

Judge WINN.—On page 17 third line the words “and Cape Horn.” (Stricken.) And insert right after it the Parish. The fact is, I should have had the Parish #1 instead of the Cape Horn all the way through this pleading; and on the next page, 18, commencing in the third line, right after the Parish #2 I desire to insert the name, “the Parish”—and strike out which is referred to in the complaint herein. (Allowed.) And the Cape Horn lode claim, commencing right before those blanks—I do not wish to fill in the blanks now and down to the word “plaintiff” in the first line below, the blanks.

By the COURT.—The word “this” goes out.

Judge WINN.—Yes, down to this plaintiff—con-

veyed, etc. I want to strike out after that and the Cape Horn lode claim, down to the word "conveyed"—the first word on the line.

By the COURT.—You leave the word "conveyed"?

Judge WINN.—Yes, sir; and down below about the 8th line from the bottom, right after Parish #2—the figure 2 is the beginning of the line. I desire to strike out "Cape Horn" there and insert "Parish." (Allowed.) In paragraph 5 on the following page we refer to the Cape Horn lode claim in [686] a way—the fifth line of paragraph 5 strike out the words "belonging to this plaintiff." (Allowed.) On the next page we have filled up those blanks—a tree three by four and on the last page, the third line from the bottom not including the prayer—strike "Cape Horn."

By the COURT.—The pleadings may be amended by erasure and interlineation on the files without filing new pleadings.

Judge WINN.—I understand Mr. Shackelford has asked to recall.

Mr. TRIPP.—I desire to announce to the Court at this time that we rest our case.

Mr. SHACKLEFORD.—I desire to recall Mr. Tripp for further cross-examination.

Judge WINN.—I object to the recalling of Mr. Tripp, for the reason that we have rested our case, and I think if they desire Mr. Tripp as a witness, they can put him on as their witness.

By the COURT.—Mr. Shackelford announcing

(Testimony of H. T. Tripp.)

that he desired to cross-examine him before you rested your case, the objection is overruled and you are allowed an exception. [687]

[Testimony of H. T. Tripp, for Plaintiff (Recalled—Further Cross-examination).]

Mr. TRIPP, recalled for further cross-examination.

(By Mr. SHACKLEFORD.)

Q. How much did you pay the men that were doing the assessment work in 1909 which you described in your direct examination yesterday?

Objected to as repetition. Objection overruled. Plaintiff allowed an exception.

A. I paid the men three dollars a day.

Q. Now, I understood you to say, also, on your cross-examination the other day that your work on the Ebner mine tunnel and in the vicinity of the two Cape Horn lode claims was done by you under the impression that all of those claims belonged to the Ebner Company. Is that true?

A. Belonged to the Ebner Company?

Q. Yes.

A. No, I don't think so. I don't believe I said that. I think I understood that they belonged to the California & Nevada Copper Company.

Q. I mean by that you did not understand at that time that they belonged to William M. Ebner personally?

Judge WINN.—I move that the answer about belonging to the California & Nevada Copper Company be stricken because I do not want the record to show

(Testimony of H. T. Tripp.)

that they are endeavoring to prove title to real property, etc., by oral testimony, especially against the record as it stands in this case.

Mr. SHACKLEFORD.—That is not the purpose of my question; of course the record title to the property, so far as the record title is concerned, is already in here and will control—this is a question as to Mr. Tripp's understanding of the situation.

Motion denied. Plaintiff allowed an exception.
[688]

A. I was working for some people that I supposed were the California & Nevada Copper Company, and it was my understanding that they had all of that ground or would have it—it was all under one consideration.

Judge WINN.—For the same reason, about the title to the property, we move to strike that answer.

Overruled. Plaintiff allowed an exception.

Q. I will ask you if it is not a fact that some time after you took charge of this property for the California & Nevada Copper Company you secured from William M. Ebner a written license or permit to cross the Cape Horn #2 and the Cape Horn lode claim.

A. Well, there was one particular claim that had been located, I think—I had an understanding first it came in as a mill-site but it was located by Mr. Ebner, so I know I knew at that time or thought I did and I was not quite sure about that particular claim and we had an agreement on that.

Q. Now, have you a copy of that agreement?

(Testimony of H. T. Tripp.)

A. Yes, sir.

Q. Have you it with you?

A. I have. (Witness produces paper.)

Q. Is that the only agreement you had with Mr. Ebner with reference to the driving of the tunnel?

A. Written agreement—I had a general talk—I went over the ground with him and we talked the matter over fully.

Q. This agreement has never been modified in any way, shape or form? A. Not that I know of.

Mr. SHACKLEFORD.—We ask leave to have the reporter copy the [689] agreement and return the same to Mr. Tripp, copy it into the record, and we offer the agreement.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial for any purpose in this case and does not tend to establish any title in any property—for the reason that it is not such an agreement as would be an agreement to convey and it is not proper cross-examination at this time to offer a paper of this nature in evidence, for the reason that it may open up the whole matter so far as we are concerned and compel us to put in a lot more evidence on some phases of the case.

Objection overruled. Plaintiff allowed an exception.

Mr. SHACKLEFORD.—(Reading:) “Juneau, Alaska, September 25, 1909. H. T. Tripp, Superintendent California & Nevada Copper Co., and F. L. Underwood, Juneau, Alaska. Dear Sirs:—In view of the fact that F. L. Underwood holds in escrow one

(Testimony of H. T. Tripp.)

certain deed conveying one Cape Horn and Eureka lode claim, upon which the assessment work for 1909 must be performed for the purpose of holding the same to comply with the law and from the further fact that the said F. L. Underwood has agreed to do such assessment work—I being the owner of one lode claim called Cape Horn #2 and the proper place for starting a long working tunnel, I make to you the following proposition: That all assessment work for these three claims, Cape Horn, Eureka and Cape Horn #2 be performed in starting this tunnel. I would further state that negotiations are now pending for the transfer of Cape Horn #2 to the said F. L. Underwood. It is my intention that in the final settlement of Cape Horn #2 it will be transferred to the said F. L. Underwood. Yours respectfully

WILLIAM M. EBNER.” [690]

Q. Now, an estimate was put by you of \$300 done on the tunnel started by you in 1909? A. Yes, sir.

Q. Does that include the work of approaching the tunnel and breaking off the face also?

A. It includes the cutting, clearing up the place and doing a certain amount of grading and road work—not the surveying or anything of that sort.

Q. The surveying too? A. No.

Q. No surveying? A. No.

Q. But it includes all the necessary work to approach the place, in addition to the rock work?

A. Yes, sir.

(By Judge WINN.)

Q. Did you board these men or pay for the board

(Testimony of H. T. Tripp.)

of them that did the work up there?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I boarded them at the mine.

Q. And paid them three dollars a day and boarded them?

A. No, I paid them three dollars a day—I calculate it would cost more than that really, but I paid them \$2.00 a day and boarded them.

Q. You counted the board in at one dollar a day?

A. Yes, sir.

Q. I don't believe I asked you this question when you were on the witness-stand before but probably you covered it—I will ask you if in your judgment the work, taking all the work [691] you did up there that you have testified concerning, if in your judgment, your opinion, these two Parish claims were benefited in the full amount of \$100 each by reason of the work you did there or caused to be done.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial.

By the COURT.—The object will be overruled on that ground.

A. I intended—it was my honest intention—to do the assessment work, to have enough done as the law required. I think I did, yes, sir; that was my intention.

Mr. SHACKLEFORD.—We move to strike the

(Testimony of H. T. Tripp.)

answer of the witness.

By the COURT.—The first part of the answer up to, “I think I did,” will be stricken as not responsive to the question.

Q. Now, Mr. Tripp, did these people go out and do the work themselves, just wherever they desired, or was that work directed by you?

A. Well, I was around with them and directing the work.

Q. Now, I will ask you, as a mining man, as to whether or not work would be of more or less value by reason of it being directed by someone who is conversant with that work than it would to allow someone who did not particularly understand mining, in opening up and developing a mine, to go ahead and do the work themselves?

Objected to as argumentative.

Objection sustained as argumentative and a matter of common knowledge. Plaintiff allowed an exception.

Witness excused.

Defendant rests. [692]

Mr. SHACKLEFORD.—We would like to give notice to the plaintiff in the case that we would like to have them produce a memorandum—as I understand it their witnesses on cross-examination were unable to locate the exact date they started to do the assessment work on the Parish #1. We give notice to them to produce the books of the company, to show the date when the work for 1909, the exact date when the work for 1910 which was claimed had been re-

sumed on the Parish #2. The books showing when your men first went on the Parish #2 claim in the fall of 1910.

Judge WINN.—I think we had that date almost certain in the evidence; if we can get an evidence as to the particular date we commenced work on that claim, we will get it. If I can find the date I will furnish them with it.

**[Motions to Strike Testimony of Hill et al., etc.
(Renewed).]**

Mr. HELLENTHAL.—Now, that the plaintiff has rested we now renew our motion to strike the testimony of Hill with reference to the conversations had with Nevins and Mr. McDonald, for the reason that the testimony tending to show the authority of Nevins or McDonald, or either of them, has not been produced, to make such statements binding on the Alaska-Juneau Company.

Judge WINN.—We resist the motion. Your Honor allowed Mr. Hill's testimony to stand for certain purposes regarding Nevins.

By the COURT.—That portion of the testimony of Mr. Hill concerning the statement of Nevins and the general conversation after assessment work had been done was stricken; that part of it concerning the conversation with McDonald in giving directions about how the assessment work should be done up there will remain. I don't remember any evidence except those—any other statements in evidence except those in [693] the general conversation regarding why he didn't tell him so and so when he went up there to survey.

Mr. HELLENTHAL.—The conversation I refer to is a conversation offered for the purpose of proving abandonment on the part of the Alaska-Juneau Company of the Oregon claim. It was at the time Mr. Hill went to survey the Colorado. Mr. McDonald told him something about leaving out the Oregon, but the purpose of the conversation at any rate was to show that the Alaska-Juneau had abandoned the property. Counsel at that time promised the Court that he would follow that testimony with competent testimony to prove that Nevins and McDonald had authority to abandon the property and the Court said the testimony might stand under the statement of counsel, and give him an opportunity to offer such proof. No testimony has been introduced and I move that any conversation had by Hill with McDonald or Nevins for the purpose of proving or that might tend to prove an abandonment of the property on the part of the Alaska-Juneau Company be stricken.

By the COURT.—The testimony as to Nevins will be stricken; that as to Joseph McDonald will stand.

Plaintiff allowed an exception as to the ruling striking the testimony as to Nevins.

Mr. HELLENTHAL.—I now make a motion to strike from the record the testimony of Graham or whoever it was with reference to conversations had with U. S. Marshal Lund for the same reason that counsel stated at that time he would connect Lund—it is with reference to the work on that tunnel; I don't know just what the testimony was now—for the purpose of showing that Lund had something to do with

(Testimony of Percy Pond.)

this company and they were prevented working there by Lund. Counsel didn't connect it up. Motion denied. Defendant excepts. [694]

Defense.

[Testimony of Percy Pond, for Defendant.]

PERCY POND, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

(It is conceded Mr. Pond is a photographer.)

Q. I will ask you if you went on the ground in controversy here at my request and at the request of the company with Mr. Stewart, one of the surveyors, and took some photographs? A. Yes, sir.

Q. I hand you this photograph and ask you if that is one of the photographs you took. A. Yes, sir.

Q. What is that a photograph of? (Counsel refers to exhibit 9.)

A. Mr. Stewart directed me to take a photograph showing this rock bluff here, which was adjacent to an open cut.

Q. That is on the first bench above Gold Creek or near there? A. Yes, sir, near there.

Q. On the right-hand side of the creek going up?

A. No, the left-hand side of the creek going up—yes, that is correct; the right-hand side of the creek going up.

Q. I will ask you if that is one of the photographs. (Counsel hands witness Defendant's Exhibit 10.)

A. Yes, sir, it is.

(Testimony of Percy Pond.)

Q. I will ask you about this picture "10" which I have just handed you—is that another view of the same?

A. That is taken from the opposite direction that the other was taken from.

Q. Who is the person standing on the brow of the hill there? A. Mr. Stewart.

Q. This place marked with a red X, what is that, with snow on it? [695]

A. That is an open cut.
(By Judge WINN.)

Q. This exhibit 9 of the defendant, you say that was taken with a view to showing what points, prominently?

A. To show this rock bluff adjacent to the open cut.

Q. The rock bluff on the left-hand side of the photograph as you look at it? A. Yes, sir.

Q. In this other exhibit of the defendant #10, what was that taken with a view to showing up prominently in the photograph?

A. Showing this open cut, the same one that is referred to in the other photograph.

Q. It was taken as a side view of the cut, was it?

A. It is a side view of the cut.

(By Mr. SHACKLEFORD.)

Q. That last picture was also taken for the purpose of showing the position that Stewart took on the ground at the time? A. That was his idea.

Witness excused. [696]

[Testimony of R. A. Kinzie, for Defendant.]

R. A. KINZIE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Your name is Robert A. Kinzie?

A. Yes, sir.

Q. Where do you reside?

A. Treadwell, Alaska.

Q. What is your business, trade, occupation or profession? A. Mining.

Q. What profession, if any, have you?

A. Mining.

Q. Mining engineer? A. Yes, sir.

Q. What if any relation do you sustain to the Alaska-Juneau Gold Mining Company?

A. I am the general superintendent.

Q. How long have you occupied that position?

A. Approximately six years.

Q. What, if any, relation did you sustain to that corporation prior to the time you became its general superintendent? A. Assistant superintendent.

Q. How long were you the assistant superintendent of that company?

A. From 1900 up to about 1905.

Q. What time in the year 1900?

A. I think it was the latter part of February.

Q. And you have then continuously acted as general superintendent or assistant superintendent at all times since? A. I have, yes, sir.

Q. As such assistant superintendent or general su-

(Testimony of R. A. Kinzie.)

perintendent, [697] what degree of familiarity did you have with the operations and business of the corporation?

A. I knew the details of the business.

Q. I now call your attention to a plat or map marked for identification, Defendant's Exhibit No. 7 and ask you to look at it? A. Yes, sir.

Q. Are you familiar with the matters and things delineated on that plat in a general way?

A. Yes, I am.

Q. You know in a general way the location of the Colorado lode claim? A. I do.

Q. Oregon lode claim? A. I do.

Q. The Canyon lode claim? A. I do.

Q. And the monuments and other things connected with the location of the Lotta lode claim?

A. Some of the monuments.

Q. And the Parish #2 as claimed to be located by the plaintiff company?

A. Some of the stakes of the Parish.

Q. The flume-line of the Alaska-Juneau Company as indicated on this plat—you are familiar with that?

A. Yes, I am.

Q. And the other matters and things generally, delineated on the plat? A. I am.

Q. Now, I will call your attention to the Oregon lode claim as located on this map and ask you when you were first on the ground covered by that claim?

Judge WINN.—We object to that question and any evidence or testimony with respect to this map, for the reason that [698] it has not been authenti-

(Testimony of R. A. Kinzie.)

cated, has not been shown to be drawn by anyone who is a surveyor; it has not been shown that the objects and things thereon are in reality as they are on the ground, and I think the map ought to have some authenticity before they testify regarding it—we object because there is no foundation laid.

By the COURT.—You expect to prove the map later?

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. In a general way the Oregon, Parish and Lotta and the Colorado and other lines and matters and things indicated on that plat are correctly delineated?

A. I think so; yes.

Same objection. No foundation laid. Objection overruled.

Plaintiff allowed an exception.

Q. When were you first upon the ground indicated upon this plat as being within the limits of the Oregon lode claim?

Judge WINN.—It is understood that any questions asked Mr. Kinzie concerning this map are objected to on the grounds I have already stated and I have an exception?

By the COURT.—Yes, sir.

A. I was there in the summer of 1900 or 1901. At this time I don't remember exactly. I can find out, though.

Q. You can find out? A. Yes, sir.

Q. Can you find out within an hour?

(Testimony of R. A. Kinzie.)

A. No, not without going across the bay.

Q. What, if anything, did you find upon the Oregon lode claim when you were first upon the ground in the way of quartz or other rock bearing values, in place? [699]

Judge WINN.—We especially object to that because Mr. Kinzie was not the locator of it. I don't know whether they are trying to prove an original discovery or not.

Objection overruled. Plaintiff allowed an exception.

A. Why, it was the first time I had been on the ground and going up the Basin we covered the ground as included in the Colorado, Wyoming, Oregon and Idaho claims. The work that we were doing at the time was just over the line from the Oregon and on the Colorado. At the time we took some samples—I have forgotten exactly at what point and then made a general *connaissance* up the creek as far as we could go on the ground included in the Oregon claim and also up the hill on the Wyoming and the Oregon and on the lower part of the Colorado. We went over the ground and determined as far as we could by looking at it the general line, the mineral zone passing through there and know we were trying at that time to determine the footwall of the main ore body.

Q. What did you find in the way of rock in place, bearing gold or other precious metals at that time?

A. Why, we found mineralized shist and quartz in place. We made no assays at the time, but we

(Testimony of R. A. Kinzie.)

thought it was mineral bearing, gold bearing.

Q. In your judgment as a mining engineer, was it gold bearing? A. Yes, sir.

Q. Where was that rock in place found by you at that time on the Oregon, with reference to the location of the Parish claim, as indicated on this plat, exhibit 7?

A. To the best of my recollection it was both on the south side and around the point. We went around the point, just above where the cabin, the Alaska-Juneau cabin, is now located—both on the north and south side of that point and [700] around the point.

Q. Please mark with a letter “a” on this plat the point as near as you can recall where you discovered that rock in place, of which you were speaking, bearing gold?

A. Why, it was about a point in here—

Q. Mark it with the letter “a.”

(Witness does so.)

Q. What kind of mineral did that rock carry in your judgment?

Judge WINN.—I object, being indefinite as to time when he made the discovery and indefinite as to which one of the Oregon claims he is intending this discovery for, whether the Corbus Oregon claim or the Datson Oregon claim.

Objection overruled. Plaintiff allowed an exception.

A. Why, the country there is a broken up shist containing iron pyrite and small quartz stringers—

(Testimony of R. A. Kinzie.)

it is a pyrite principally.

Q. What does it carry—gold?

A. Why, it does carry gold; sometimes less sometimes more.

Q. When were you next upon the ground within the Oregon location as indicated here on the map and made any discovery of rock in place, bearing gold or other precious metals?

A. Why, I was on the ground embraced in these four or five claims there a number of times each year afterwards. I wouldn't go to look for any particular discovery, assumed we had a discovery there in plain sight.

Q. Where was the ore in plain sight on the Oregon lode? I am not speaking now of the Colorado; I am speaking of the Oregon.

A. Where Gold Creek and Snowslide Gulch had cut through, giving a cross-section of the country rock! [701]

Q. Where is that with reference to the point marked "a" by you?

A. It is right in that general vicinity, both sides—you get a very good cross-section there on the north and south side of that point.

Q. That is the same ore you saw in place there in 1900 or 1901 whenever it was, when you were there the first time? A. It was, yes.

Q. Now, Mr. Kinzie, do you know the ground covered within the boundaries of the Parish #2 lode claim as platted upon this plat—have you been over that ground?

(Testimony of R. A. Kinzie.)

A. I know the south part or the south two-thirds of the claim very well.

Q. Southerly two-thirds?

A. Southerly two-thirds, yes; the northern part of the claim I am not so well acquainted with.

Q. Do you know where the Borean pit is?

A. I do, yes, sir.

Q. Have you ever been up through there?

A. I have not.

Q. I hand you here a photograph marked "9." Do you know what that is? A. Yes, I do.

Q. What is it? A. A part of the Borean pit.

Q. Are you familiar with the ground up there?

A. I am.

Q. I now call your attention to the picture marked Defendant's Exhibit "10" and ask you to look at that and see a point there indicated by an "X" marked on the right-hand side of the picture. Do you know what that is? A. Yes, I do. [702]

Q. What does that picture represent?

A. That represents a small open cut there.

Q. Are you familiar with the country around that pit there and around that cut? A. Yes.

Q. When did you see it last? A. Last Sunday.

Q. Did you make a thorough detailed examination of it? A. I did.

Q. How much of that country did you examine at that time?

A. I went over in detail the country south of what is known as Miller's Gulch—from Miller's Gulch down into Snowslide Gulch.

(Testimony of R. A. Kinzie.)

Q. How much of the Parish #2 does that take in?

A. I should say it would take in about a half.

Q. What half? A. The southeasterly half.

Q. Does it take in the Borean pit? A. It does.

Q. And surrounding country? A. It does.

Q. Did you examine that part of the Parish #2, the southerly half, with a view to determining whether there was any rock in place on that portion of the claim near the surface?

A. The entire southerly half?

Q. Yes. A. Yes.

Q. What did you find with reference to there being any rock in place anywhere near the surface, on the southerly half of the Parish #2?

A. The entire southerly half?

Q. Yes. [703]

A. Well, from Miller's Gulch on the southeast side to the canyon of Gold Creek the country is entirely covered by slide, the Gold Creek country, a cross-section of the country there, and, of course, the rock is in place at that point.

Q. I am speaking now of the portion of the Parish #2 lying between Gold Creek or the banks of Gold Creek and the southerly end line. What is the condition of that part of the claim with reference to there being any rock in place anywhere near the surface? A. The southerly end line?

Q. Yes; I mean along where the Borean pit is.

A. That is entirely covered by rock slide in the southeast portion, all the way—it is made up of two slides, one in the vicinity of Miller's Gulch and the

(Testimony of R. A. Kinzie.)

other coming from a point on the north side of Snow-slide Gulch.

Q. How about the Borean pit—any rock in place anywhere in that vicinity?

A. In the Borean pit itself?

Q. Yes. A. No, there is not.

Q. Do you know where that open cut is—the Borean pit? A. I do.

Q. Is there any rock in place in the neighborhood of that open cut? A. I didn't see any.

Q. Did you examine it? A. I did.

Q. Answer the question whether there is or not.

A. I don't think there is any bedrock within at least thirty or forty feet, if not more, of the bottom of the Borean pit itself. [704]

Judge WINN.—We move to strike out the last part of his answer.

Motion denied. Plaintiff allowed an exception.

Q. I now hand you this photograph marked "10" and call your attention to a rock shown on the right-hand side of the picture and ask you if you are familiar with that piece of rock there?

A. I am. I looked at that very carefully.

Q. Is that a boulder or rock in place?

A. That is a piece of slide from the cliff above and is part of the general slide.

Q. Part of the general slide?

A. Yes, part of the general slide.

Q. Is that in place or not? A. It is not in place.

Q. Is there, Mr. Kinzie, any rock in place in the Borean pit, at the Borean pit or within a radius of

(Testimony of R. A. Kinzie.)

50 or 100 feet on each side of the pit?

A. No, there is not—you mean to be seen?

Q. Yes. A. No, there is not.

Q. How deep, in your opinion, is the slide rock there?

A. The slide rock, starting at a point—starting at Miller's Gulch and following along Gold Creek until you come to a point almost in front of the two Alaska-Juneau tunnels and then going straight south to the side line of the Colorado or very likely a little southeast from that point—the country above is entirely covered by slide rock.

Q. To what depth?

A. It is varying from a few feet, practically nothing at that point to, I should judge, 50 to 80 feet.
[705]

Q. To what depth is the country covered by slide in the vicinity of the Borean pit, in your opinion?

Judge WINN.—I object to that—his opinion on a subject of that kind, without further investigation and no foundation being laid, is not an opinion that would be regarded as evidence. It is incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. From the topography of the country I would say it would vary from 50 to 80 feet.

Q. Miller's Gulch is not indicated on this plat, is it?

A. Miller's Gulch is here—Miller's Gulch comes into the Gold Creek at a point twenty or thirty feet,

(Testimony of R. A. Kinzie.)

maybe not that much, above the Alaska-Juneau dam—in fact, you may say it is right at the dam.

Q. What is the course of Miller's Gulch—easterly and westerly? A. Practically so; yes, sir.

Q. And the country to the west of Miller's Gulch is what you are speaking of?

A. Southeast of Miller's Gulch.

Q. Calling your attention to this plat, the upper part being east, what is the country you are speaking of with reference to Miller's Gulch?

A. Southeast of Miller's Gulch.

Q. Now, Mr. Kinzie, you recall the time when Datson located the Oregon in 1909 or 1910?

A. I do.

Q. How long after the Oregon was located by Mr. Datson, with reference to the time Datson located that, were you on the ground?

A. Two or three days after that—I don't remember exactly the [706] number of days—I was on the ground quite frequently then.

Q. What then did you find, if anything, in the way of a location notice? A. I found the notice.

Q. Posted and signed by Datson? A. Yes, sir.

Q. Where did you find it?

A. On a point above the rock cliff, almost due east from the Alaska-Juneau cabin.

Q. Within the boundaries of the Oregon claim as platted here? A. It was.

Q. I now direct your attention to a plat marked for identification, Defendant's Exhibit "11" (the map is so marked), and ask you if you know what

(Testimony of R. A. Kinzie.)

that is? A. I do; yes, sir.

Q. What is it?

Judge WINN.—I object to the question. There is no foundation laid for the witness to answer the question.

Objection overruled. Plaintiff allowed an exception.

A. It is a map showing the outline of the property belonging to the Alaska-Juneau Gold Mining Company and the Ebner Gold Mining Company and the Dora group and the William Ebner property.

Q. How is the property of the Alaska-Juneau Gold Mining Company indicated—by what color?

Judge WINN.—We make the same objection—no foundation laid for the witness to answer the question. The map has not been authenticated and the witness has not qualified as a surveyor and has not testified concerning any personal knowledge as to the data which he is about to testify concerning.

Objection overruled. Plaintiff excepts. [707]

Judge WINN.—And the same objection to each one of these questions concerning this map.

Objection overruled and exception allowed plaintiff.

A. The Alaska-Juneau property is shown in pink, the pink border—I should say it was pink.

Q. How is the property of the Ebner Gold Mining Company indicated?

A. The green includes the property of the Ebner Gold Mining Company and the Dora group.

Q. Will you kindly take your lead pencil and mark

(Testimony of R. A. Kinzie.)

out the property of the Ebner Gold Mining Company with that lead pencil so it will show what is the property of the Ebner Gold Mining Company independent of the Dora group?

(Witness does so.)

Q. Mark that lead pencil line with the letter "a."

(Witness does so.)

Q. Now, what portion of the property there marked in green belongs to the Ebner Gold Mining Company with reference to the lead pencil mark you have just drawn marked with the letter a.

A. All the part in green to the east of the lead pencil line belongs to the Ebner Gold Mining Company, as far as I know.

Q. The other belongs to other people?

A. The other belongs to other people.

Q. How many patented claims has the Alaska-Juneau got up there?

A. Thirty-one, I believe it is.

Q. Do you know how many unpatented?

A. We have now about fourteen or fifteen—we had eleven—have fifteen now.

Q. Unpatented? A. Yes, sir.

Q. And all the patented and unpatented are indicated by the [708] pink color on the map there?

A. No; there are some claims that have been located since, but most of the property of the Alaska-Juneau Company is shown in pink colors.

Q. How long has the Alaska-Juneau property been operated?

A. As the Alaska-Juneau Company?

(Testimony of R. A. Kinzie.)

Q. Yes.

A. I am not positive, but I think the company was organized in 1895 or 6.

Q. The property had been operated before that?

A. Yes, it had been operated for a considerable period before that.

Q. Now, what, if anything, in the way of a stamp-mill is there on this property?

A. At present there are two stamp-mills, the thirty-stamp mill and the small experimental five-stamp mill at the lower tunnel; they are situated in Silver Bow Basin.

Q. Is that five-stamp mill indicated on this map?

A. No, it is not.

Q. Will you please mark with a letter "B" the point on that map where that five-stamp mill is, approximately?

(Witness does so.)

Q. When was that thirty-stamp mill built? Was that constructed when you came here?

A. It was; yes, sir.

Q. When was the five-stamp mill built?

A. The five-stamp mill was originally Archie Cameron's mill and was reconstructed and moved to the mouth of the lower tunnel about six years ago.

Judge WINN.—Do I understand that Mr. Kinzie was here at the time this last mill was built?

Mr. SHACKLEFORD.—Yes, when it was reconstructed six years ago. [709]

Q. That was done under your supervision?

A. Yes, sir, it was.

(Testimony of R. A. Kinzie.)

Q. Now, what plan of development has the Alaska-Juneau Company been working on ever since you came to the country in 1900 and formed a connection with the company as assistant superintendent? State the plan fully, in your own way.

Judge WINN.—I object to the question at the present time as incompetent, irrelevant and immaterial. It doesn't tend to prove any of the issues as framed under the pleadings.

By the COURT.—I understand he is simply showing the carrying to completion of the plan according to the pleadings.

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. The general plan was to thoroughly prospect and sample the ore that the company owns in Silver Bow Basin and both the 30 and the 5-stamp mill have been used for that purpose practically for the last ten or eleven years. Basing our calculations upon the results of these mills, we found out that it was imperative that a mill should be built that would give us a longer working season. In the Basin we have a season there of about five months, sometimes a little more and sometimes a little less, and the general plan as outlined was to drive a tunnel—

Q. When was this plan outlined?

A. That plan was outlined in a general way before I arrived.

Judge WINN.—We object to that and move it be stricken. He is testifying now as to what the in-

(Testimony of R. A. Kinzie.)

tention of somebody was before he came here.

By the COURT.—You may state if there has been anything done in connection with the handling of the property to show that such a plan had been adopted before you came. [710]

Mr. HELLENTHAL.—I am asking the plan under which he worked when he came.

Q. Do not testify in regard to what you were told with reference to the plans—merely what you know they were at the time you came here.

A. That was the plan as I am giving it to you.

Q. Go on.

A. And for this purpose we acquired the property shown in the southerly part, the southwesterly part of the general group in the Silver Bow Basin and on the divide, dividing the Basin of Gold Creek from Silver Bow Basin, also the claims connecting the Basin claims with the shore of Gastineau Channel.

Q. I want the entire plan of development that the company was working under at the time you came here and has been working under since—the plan has not been changed?

A. The plan has not been changed in the main details.

Q. Tell what that plan was.

A. And before some of the property now owned by the company was acquired we had started the driving of four crosscut tunnels in the basin proper.

Q. When you speak of the Basin—the Silver Bow Basin—where is that with reference to the Alaska-Juneau stamp-mill?

(Testimony of R. A. Kinzie.)

A. The stamp-mill is in Silver Bow Basin—on the southerly side of Silver Bow Basin.

Q. Go on.

A. These tunnels have been driven so that they have crosscut to what is known as the first slate foot-wall of the ore zone.

Q. You are testifying to the development you did?

A. Yes, sir. [711]

Q. I want you to state to the Court in the shortest way you can the plan under which the Alaska-Juneau Company was operating at the time you came here, where, if any place, they expected to place their mill, how they intended to operate it, how they intended to get the ore there and how they intended to propel that mill.

Judge WINN.—We object to that; it would be hearsay, and we think it is incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The plan in a general way, was to develop the ore on the southerly side of Silver Bow Basin, driving a tunnel from the shore of Gastineau Channel to connect with the bottom of our workings in Silver Bow Basin and build a mill on the shore of Gastineau Channel to treat the ore mined in the Basin.

Q. How is that mill indicated on this plat?

A. It is indicated by a rectangular piece.

Q. How is it marked?

A. Proposed 200-stamp mill.

Q. What is the size of the mill you intended to

(Testimony of R. A. Kinzie.)

build? A. 200 stamps.

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—I understand that counsel will follow this up by showing that something has been done?

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. Will you indicate on this map the point from which you intended to drive the tunnel and tap the ore bodies on Silver Bow Basin—is that the portal?

A. Yes, that would be the portal.

Same objection. Overruled. Plaintiff excepts.
[712]

Q. The portal of the tunnel is situated on what claim? A. The Colorado.

Q. And is marked on this map with the word tunnel? A. It is; yes, sir.

Q. Where, according to your plan, is that tunnel to be driven to?

A. It is to be driven under the ore body in Silver Bow Basin.

Q. What is the size of the tunnel?

A. The tunnel would be an 8x12.

Q. How did you intend to get the ore from the portal of the tunnel to the stamp-mill on the beach?

A. Electric haulage.

Q. Over what?

A. Over a tram road from the main raise which would be at the face of the main tunnel.

(Testimony of R. A. Kinzie.)

Q. Through the tunnel?

A. Through the tunnel and then over a tramway from the portal of the tunnel, immediately above the mill.

Q. How is that indicated on the map—the route of that tramway?

A. That is indicated by a double line marked proposed tram and flume—proposed flume and tram.

Q. Where did you intend to get the power from to operate the stamp-mill on the beach?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The water-power to be used—we proposed to take it from Gold Creek.

Q. At what point?

A. At a point indicated by the word dam on this map.

Q. On what claim is that dam?

A. The dam is on the Oregon.

Q. How was it to be conveyed from that point to where you [713] intended to use it?

A. By a flume.

Q. Along what route?

A. By the route indicated by the double line marked proposed flume and tram.

Q. How much head would that give you at the mill? A. Between 420 and 450 feet.

Q. That is the plan, as I understand now, by which the company was working at the time of your arrival in 1900?

Objected to as incompetent, irrelevant and imma-

(Testimony of R. A. Kinzie.)

terial and hearsay.

Objection overruled. Plaintiff allowed an exception.

A. It was, yes.

Q. Has that plan ever been changed?

A. Only in minor details.

Q. The general plan?

A. The general plan is the same.

Q. Now, in order to carry out that plan what, if anything, has the Alaska-Juneau Gold Mining Company done since your arrival—first, in the way of development work on the property—first, I will ask you what is the character of the rock with reference to being high grade or low grade?

A. It is a low-grade rock.

Q. In order to work that rock, can that rock be worked to advantage with a small mill?

A. No, sir; it cannot.

Q. Can it be worked to advantage running a mill five months in the year? A. No, it cannot.

Q. How large a mill is necessary in order to work that mine to advantage? [714]

A. I should say the minimum sized mill would be 150 to 200 stamps anyway. I think 150 would be too small.

Q. Now, what have you done in the way of development work in the mine in carrying out the plan and scheme you have indicated in order to prepare the mine for the erection and operation of a 200-stamp mill?

A. The mine has been developed by four cross-cut

(Testimony of R. A. Kinzie.)

tunnels, together with drifts and raises from same. These tunnels have developed a block of ore divided into three layers of about close to 3,000 feet in length.

Q. How wide?

A. The belts of pay ore varying from 47 to 160—I have forgotten the exact size of the footwall belt; and this ore has been thoroughly sampled by means of open pits and short tunnels on the surface, the sampling being done by mill runs; the section shown by the lower tunnels has been sampled by means of the five-stamp mill and for the last two years by means of our thirty-stamp mill.

Q. How has this work of development been carried on with reference to having been continuous or otherwise, since your arrival here in 1900?

A. It has been continuous.

Q. What is the condition, the stage of development work in the Alaska-Juneau mines at the present time, with reference to the ability of the mine to supply ore for a 200-stamp mill?

A. There is no doubt at all about the ability of the mine to supply the requisite ore for a 200-stamp mill.

Q. At this present stage of development, can the mine be worked to advantage unless such a mill is built? [715]

A. No, it cannot be worked at all as a commercial proposition.

Q. How much money has the Alaska-Juneau Gold Mining Company expended in the development of its property and in getting the ore blocked out preparatory to the erection of the 200-stamp mill?

(Testimony of R. A. Kinzie.)

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Since I have had anything to do with the mine or starting with the year 1900, I have expended, not including the work that was done on the lower water right, about \$530,000.

By the COURT.—Not including what?

A. The work done last year on the water right, in regard to the litigation—

Q. When did your development work reach the stage where you had to develop—if at all—to get ready for the erection of a mill,—as to time?

A. Why, we started five years ago to drive what would be known, what you might consider as, the Silver Bow Basin end of this main tunnel scheme—it is known as our lower pit tunnel.

Q. Five years ago?

A. No, that tunnel was started about—it will be seven years ago.

Q. How far did you drive it?

A. That tunnel has now been driven up to what is known as the Silver Bow fork—it is a distance of 1,086 feet, I think, is the total length.

Q. From where?

A. From the lower edge of our property in Silver Bow basin to what is known—to where it intersects the main fork known as the Silver Bow fork.

Q. How far is the lower end of the tunnel from where your [716] thirty-stamp mill is situated?

(Testimony of R. A. Kinzie.)

A. The lower end of the tunnel? It would be about 250 or 300 feet.

Q. I mean, now, the further end of the tunnel—how far this way is it from the stamp-mill?

A. The lower end of the tunnel is right about the location of the five-stamp mill.

Q. Where is the upper end of the tunnel?

A. The tunnel is a crosscut tunnel.

Q. How long is it?

A. Ten hundred and eighty-six feet from that point. I can't be correct to the foot.

Q. When was it that your tunnel work had reached a stage that the erection of the 200-stamp mill became necessary, if at all?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. Last year was the first time that we considered that the tunnel work had reached a stage where it would be advisable to take up a water right, so that we could show a continuous use of the water.

Q. Now, what would you say last year with reference to that mine being in condition to run the mill?

A. The mine has been in condition with the exception of these tunnels and assessment work, I should say, the last two or three years.

Q. Is there any other feasible or practical place where you can erect the 200-stamp mill except at the point indicated on this plat?

Objected to as incompetent, irrelevant and immaterial.

Q. (Continuing.) So as to mill the ores mined

(Testimony of R. A. Kinzie.)

from the Alaska-Juneau mines? [717]

Objection overruled. Plaintiff allowed an exception.

A. We consider that the most practical and feasible place.

Q. What are the peculiar advantages of the situation of the mill on the beach at that place over a mill situated elsewhere?

A. Why, there are numerous advantages. In the first place, during the summer months you get the benefit of water power from Gold Creek, and in the winter months you are in close proximity to salt water, which can be pumped to be used as battery water, and also it is closer to the electric source of supply if you bring it in, and if you do not bring it in, the fuel can be landed at the power station, to the mill itself and the main, of course, or principal feature of all, you get an all year service, where at the Basin you get a 5 or 5½ months' service.

Q. Is it feasible to erect a mill in the Basin, a large mill, to operate a large mill? A. The year around?

Q. Yes.

A. No, it is not.

Q. Is it a feasible scheme to operate it a part of the year?

A. Yes; you can erect a mill there and operate it a part of the year.

Q. As a commercial proposition?

A. No, not as a commercial proposition.

Q. Would the milling and mining of the ore pay if conveyed to your mill on the beach in accordance

(Testimony of R. A. Kinzie.)

with your plan, and there milled?

Same objection, and as leading and suggestive.

Objection overruled. Plaintiff allowed an exception. [718]

A. I think it will; yes.

Q. Could it be made to pay according to any other plan that you know of?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. No, I don't know of any other plan.

Q. In order to operate this mill, where is it necessary that you should get your power?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The power will have to be taken from Gold Creek; that is the only available water-power.

Q. Where have you got to take it, in order to get it to the mill at all, how far up the creek have you got to go?

A. Well, we have to go at least as high as the point we are now, to avoid a great deal of extra expense.

Q. At least as high as the point which is marked here as your dam? A. Yes, sir.

Q. The point of diversion? A. Yes, sir.

Q. Now, explain to the Court why you have to go that far up in order to get to the beach?

A. The flume that will convey the water from Gold Creek passes over a gap which is back of the town of Juneau.

Q. A gap or ridge?

(Testimony of R. A. Kinzie.)

A. It is a ridge, with a gap in it. Now, as it is, even with our present location, it would require quite a large cut at that point, and if we dropped lower down, we would lose, not only the head and power that the water would give us, but [719] it would entail the additional expense of driving a tunnel through heavy slide rock.

Q. How far would the tunnel have to be driven through slide rock if you dropped down the creek?

A. How far down the creek, if at all? Well, there would be a tunnel there three or four hundred feet long.

Q. What is the character of the rock you would have to go through?

A. Well, the rock is a hard dioritic rock that has been broken up considerable, which would mean that rock in place, in the strict sense of the word, would be much easier to drive a tunnel—I think a tunnel through that point would have to be heavily timbered to maintain it at all.

Q. What would it be, with reference to being expensive or otherwise, to drive it?

A. It would be very expensive.

Q. How about its maintenance—would it be expensive or otherwise?

A. It would be expensive to maintain, also.

Q. In driving a 300-foot tunnel, how far down the creek would you be able to put your dam?

A. Along the line of the creek?

Q. Yes. A. A very short distance.

Q. How short a distance?

(Testimony of R. A. Kinzie.)

A. You couldn't go down the creek more than—well, if you dropped thirty or forty feet down the creek you would be increasing the depth considerably here.

Q. Suppose you dropped five hundred feet down the creek?

A. The scheme wouldn't be feasible at all. [720]

Q. The scheme wouldn't be feasible? A. No.

Q. Would it be feasible at all if you dropped down 100 feet? A. No, it would not.

Q. You are familiar with the grade as established on this map—the flume-line grade—in a general way? A. In a general way; yes.

Q. Could that grade be changed materially and the water conveyed in accordance with your plan?

Judge WINN.—We object as incompetent, irrelevant and immaterial and does not prove or disprove any of the issues in this case.

Objection overruled. Plaintiff allowed an exception.

A. No, it cannot be changed and kept the same.

Q. Could the course or direction of the flume be altered materially and the water conveyed in accordance with your plans at the point where it is to be used? A. No, it could not.

Q. Do you know where the Parish #2 is situated?

A. I do.

Q. Could the water be diverted from Gold Creek and used by you in driving the mill on the beach for power purposes and other purposes, without crossing the ground as claimed to be embraced within the

(Testimony of R. A. Kinzie.)

Parish #2, in the manner indicated on your plat?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. It could not be done.

Q. It could not be done? A. No. [721]

Q. Now, Mr. Kinzie, I will ask you what you did about July or August of 1910, looking towards the appropriation and diversion of the waters of Gold Creek, what was the first step you took in accordance with the plan outlined by you?

A. Well, the first visible step on the ground was the location of the notice.

Q. What, if anything, did you do before that?

A. We had been on the ground—that is, I had been on the ground, and as soon as Mr. Bradley arrived, I went over the plan with him and we determined the exact point where we wished to take out the water.

Q. Who is Mr. Bradley?

A. The president and consulting engineer of the Alaska-Juneau Company.

Q. What did you and Mr. Bradley do?

A. We then determined the point at which the diversion was to be made and the location was to be made, and Mr. Mulligan was sent up to make the location.

Q. That was what year? A. That was in 1910.

Q. Was this point determined upon by you in accordance with the plan that had been previously followed or was it a divergence from that plan?

(Testimony of R. A. Kinzie.)

A. No, it was not.

Objected to as incompetent, irrelevant and immaterial and leading and suggestive. Objection sustained.

Q. How did that point of diversion as settled upon by you and Mr. Bradley in 1910—where was it with reference to the place at which you intended to divert the water under the plan of the proposed scheme you have been talking about? [722]

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. It is the point at which we determined to take the water from Gold Creek.

Q. In accordance with the general scheme?

A. In accordance with the general scheme; yes.

Q. How did you determine upon the exact point at this time, in 1910—what did you use, what data did you use?

A. It was determined from maps in our office.

Q. What maps, what kind of maps—have you topographical maps of that country?

A. Yes, the particular map that he was given his instructions from was a topographical map of the United States Geological Survey.

Q. Have you the map you used at that time?

A. Yes, sir.

Q. Have you it here?

A. Yes, sir, I have. (Witness produces the map.)

Q. When was it you determined to divert the

(Testimony of R. A. Kinzie.)

water at the point indicated from this topographical map you have produced? You said it was in 1910, but I want to *know month* it was.

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The month of July.

Q. That having been determined, what was your next step—what did you do?

A. Mr. Mulligan—L. D. Mulligan—was sent up to make the location. I might say that that map was used to illustrate and show Mr. Mulligan where he was to go—we had been using it in conversation regarding the matter. [723]

Q. Does this map show the topographical condition of the country up about Gold Creek, the place of your intended mill in Silver Bow Basin and other localities about there? A. It does.

Objected to as incompetent, irrelevant and immaterial and not the best evidence.

Objection overruled. Plaintiff allowed an exception.

(The map is marked Defendant's Exhibit #12 for identification.)

Q. The map I referred to in my last question is the map marked for identification Defendant's Exhibit #12—that is the topographical map of that section of the country? A. Yes, sir.

Same objection. Objection overruled. Plaintiff allowed an exception.

By the COURT.—I understand you to say the

(Testimony of R. A. Kinzie.)

point was marked on there in giving this man his instructions.

A. Yes, sir. It is a topographical map; it is not a geological map.

Q. Who is Mulligan?

A. Mulligan was an employee of the Alaska Treadwell Company.

Q. What are his initials? A. L. D.

Q. What is the date he was sent up there to locate the water? A. August first.

Q. Where was he told to go?

A. He was given the directions. I have forgotten the exact words.

Q. On what claim was he directed to post the notice? A. On the Oregon claim. [724]

Q. Did you see the notice posted by Mr. Mulligan afterwards? A. I did.

Q. When?

A. It was within two or three days afterwards.

Afternoon Session.

Q. I will ask you to explain to the Court just how you happened to instruct Mr. Mulligan to place the location notice at the place it was originally placed on the creek.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The measurement was taken from a patent plat of the Harris mining district in our office and the distance was measured from the compressor plant to

(Testimony of R. A. Kinzie.)

the side line of the claim as shown on that patent and sufficient room allowed to have the notice well over the side line.

Judge WINN.—We move to strike that out—that is not the best evidence, as tending to prove the side lines of the Lotta lode claim.

By the COURT.—It is not the best evidence for that purpose.

Mr. SHACKLEFORD.—I am not introducing it for making the actual position of the Lotta, but introducing it for the purpose of showing just how it happened to be on what the plaintiffs claim to be the Lotta patented ground.

By the COURT.—The motion will be denied. It will not be considered for any purpose of fixing the Lotta line, only as it bears on the conduct of this witness in attempting to avoid the Lotta claim as he understood it.

Plaintiff allowed an exception to the ruling.

Q. This plat that you have in your office—explain to the Court how that is made up and how the improvements were [725] placed on the plat from time to time.

Objected to as not the best evidence. Objection sustained.

Q. Now, did you have Mr. Case take some pictures of the workings on this Gold Creek water right?

A. I did; yes, sir.

Q. What date were they taken?

A. The morning of October 4th.

Q. I will hand you a picture, which I will ask the

(Testimony of R. A. Kinzie.)

stenographer to mark for identification Defendant's Exhibit #12 (it is so marked), and ask you if that is a correct representation of the grade line on the lower end of that right of way, on October 4, 1910.

A. It is; yes.

Judge WINN.—I shall object to this unless Mr. Kinzie knows of his own knowledge when this picture was taken, because the date becomes material.

Q. Did you instruct Mr. Case to take the pictures?

A. I was there when the picture was taken.

Q. What date was it taken?

A. The morning of October fourth.

Judge WINN.—If Mr. Kinzie was there I have no objection.

Q. Explain to the Court the position of the two portals as they appear in the right-hand end of that picture.

A. The two openings shown about the centre of the photograph show the mouths of two tunnels that were driven into the hill to carry the flume-line when completed.

Q. A tunnel was necessary for the flume at that point for what reason?

A. For the reason that it was impracticable to construct an open flume-line across Snowslide Gulch on account of the [726] snowslides that occur every winter—snowslides would take out any structure of the sort that might be built there.

Q. When was the upper, the tunnel showing the upper portal there, driven—you know, don't you?

A. Yes. The tunnel was started, if I remember

(Testimony of R. A. Kinzie.)

correctly, on September tenth, the upper tunnel.

Q. When was the lower portal commenced, do you remember?

A. No; that was some ten days or two weeks later. I don't remember exactly.

Q. The grade line shown on this picture is the present grade line of the Alaska-Juneau flume?

A. Yes, sir.

Q. I will hand you a picture which I will ask to be marked for identification Defendant's Exhibit #13. I will withdraw that at this time. Mr. Hellenenthal desires to ask you some questions.

(By Mr. HELLENTHAL.)

Q. You have testified that in determining upon the point you wanted that notice posted, you used the map offered in evidence, the topographical map, and I understand you also used the patent plats of the adjoining claims to the Oregon.

Judge WINN.—We object to that; they couldn't prove the boundaries of the Oregon claim in this manner, what the patent maps and plats show.

By the COURT.—The only effect this evidence can have is on the good faith of the witness. These patent plats are the best evidence, and so far as undertaking to fix the boundary line of the Lotta, the evidence will not be considered, but as going to the good faith of the witness in the directions given to the man who located the water, it may be admitted. Plaintiff allowed an exception to the ruling. [727]

A. I did; yes, sir.

Q. How did you determine upon the southerly side

(Testimony of R. A. Kinzie.)

line of the Lotta? How did you determine upon your point of diversion, how did you measure it, how did you figure it out where your point of diversion should be from your plats, that is, the short way?

Mr. HELLENTHAL.—This is offered merely to show how Mr. Kinzie determined upon the point where he made his diversion of the water right.

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. The plat used was a plat compiled from the records in the surveyor general's office and we took a point at which the stairs led down to Gold Creek in front of the new Ebner mill, and measured along the course of Gold Creek to the southwesterly side line of the Lotta as shown on that plat; we then allowed a sufficient distance for a man who was not accustomed to measuring beyond it to be sure we were over the line and gave him that point to post his notice.

Judge WINN.—We demand for our inspection and the cross-examination of the witness the production of the map he has referred to in his testimony.

Q. What kind of a map was that?

A. The map actually used is a large plat. We could bring over a small scale map showing the same thing.

By the COURT.—You can reduce the size?

A. Yes, sir.

By the COURT.—Bring it over.

(Testimony of R. A. Kinzie.)

The WITNESS.—I think we have one here,—we have one of the maps showing that. [728]

Q. What was the next thing you did after having the notice posted in the way of diverting the waters of Gold Creek under that notice?

A. A man was sent up.

Q. When?

A. The man was sent up on August first.

Q. Who was the man? A. O. M. Harry

Q. And what was he sent up there for?

A. He was sent up to prepare a place for the men working on the grade to live and to select a place for a cabin to be built and to start the preliminary work of the grade for a flume-line.

Q. When did he commence work on that?

A. He started August first—he went up there August first.

Q. When were you on the ground—were you on the ground the first of August? A. No, I was not.

Q. When were you on the ground?

A. I am rather doubtful about that—whether it was the third or sixth; it was either one of those dates—of August.

Q. When you came up there, what had Harry been doing, if anything?

A. Harry had selected a place for a house—he had cleared and brushed away there, and the lumber was on the way up and when I went up that day he had been up the creek to a point, I should say, 100 to 150 feet below the location to ice—

Judge WINN.—We object to this as hearsay evi-

(Testimony of R. A. Kinzie.)

dence; he was not there and could only know it by Harry telling him.

Mr. SHACKLEFORD.—I am asking him for the evidences on the ground. [729]

By the COURT.—The objection will be overruled. Confine your answer to what you found on the ground and the line of work evidently done.

Q. Tell what you saw.

A. The work I saw was a cutting of the brush at the point where the cabin was afterwards built—a trail was built up to a point—from the old dump of the Borean pit to a point just above the present grade of our flume-line, and the trail had been started from that point around a cliff shown in Gold Creek.

Q. Were you up at the point where the water was afterwards diverted and where the notice was posted?

A. I was there later in the day; yes.

Q. What was done there, if anything?

A. The work that had been done there—there had been some old sluice-boxes that had been used, had been taken out and part of the water was turned on—the water had been turned on to a bench, taken out of Gold Creek and turned on to this bench and part of the bench sluiced off, that is, it was not dirt; it was gravel and stuff.

Q. What was that sluicing for, what kind of work was it?

A. Why, under the instructions that is the work he was to do, prepare for the flume-line along that point, so the rock men could go to work.

Q. That was either the third or sixth of August,

(Testimony of R. A. Kinzie.)

you are not sure which? A. Yes, sir.

Q. Have you any data by which you can refresh your memory so as to determine later on what the date was?

A. I thought I had. I might find it yet.

Q. What did you do with reference to continuing the work of [730] carrying out this plan at that time, during the month of August. First, when you were on the ground on the third or sixth of August, was there anyone else on that ground in possession of it or around there occupying it except Harry?

A. I saw no one.

Q. Had there been anybody else there would you have seen them?

A. If they were in that vicinity I certainly would have seen them.

Q. I am speaking of the ground covered by the Oregon claim. Did you find anybody on this ground?

A. No; I was up and down Gold Creek—there was a short gap below the falls that I couldn't get up at times—and I saw no one on the ground.

Q. Was there any habitation, building, cabin or anything else there on the ground covered by the Oregon or Parish lode claims described in this exhibit #7 for identification?

A. Nothing below the Ebner compressor building.

Q. Nothing below the Ebner compressor building?

A. No.

Q. You heard the testimony of Mr. Ebner that they built a blacksmith-shop at one time on the Par-

(Testimony of R. A. Kinzie.)

ish #2? A. I did.

Q. Was that there at that time?

A. I didn't see it.

Q. Would you have seen it if it had been there?

A. I think I would—in fact, I know I would if it had been in that vicinity.

Q. Was there any other building or buildings there?

A. No, the only structure of any kind whatever was a tower that was built—well, I should say on the map the horizontal [731] projection would be about 200 feet due east of the present cabin. I understand it is one of Perseverance towers.

Q. That wasn't a habitation? A. No.

Q. There wasn't anybody living in that tower?

A. No, sir, it was a bolted tower—that is the only structure of any kind that I saw on the ground at that time.

By the COURT.—200 feet east of your cabin?

A. Of the Alaska-Juneau cabin.

Q. When were you on the ground next?

A. Well, I was on there at intervals of perhaps four or five days—sometimes down at the cabin and sometimes up Snowslide Gulch; sometimes further up the creek.

Q. Did you keep anyone on the ground on that flume grade during that time?

A. O. M. Harry was at work continuously on that.

Q. Continuously? A. Yes, sir.

Q. When you say at work continuously, what was the work?

(Testimony of R. A. Kinzie.)

A. He had cleaned off the bench—first, he had built this trail coming down exactly where our dam is at the present time and he had cleaned that rock bench off there, cleaning dirt and slide rock that had come down the hill so it left it bare for what ties were necessary to tie the flume, and on this end he had constructed the steps, cutting steps in up to the grade of our upper tunnel and had started to grade along a trail, so the surveyors could get along that point.

Q. That trail, you say, he built at that time was along the flume grade at the point where your present dam is?

Judge WINN.—We object to all this evidence for the reason [732] that it is not the best evidence. I think they ought to have Harry here to testify so we can cross-examine him.

Objection overruled. Plaintiff allowed an exception.

Q. Did you see this trail?

A. Yes, I saw him at work on it.

Q. Did you see the trail when completed?

A. I did. I went over it a number of times.

Q. Where did it lie—the trail?

A. The trail came up north of the cabin, up what is known as the dump from the old Borean pit and came up the present flume grade—not the present flume grade, just above the present flume grade, and then continued due north to a point; there is a gully—I don't know the name of it—and there are two branches, one branch started from that point up the hill and around the cliff and down to the present

(Testimony of R. A. Kinzie.)

site of the Alaska-Juneau dam.

Q. How did the grade run with reference to the flume-line—parallel with it or otherwise?

A. When projected it would be the same place—the cliff was very steep there.

Q. The same place the flume grade was afterwards established? A. Yes, sir.

Q. When was that trail completed, about when?

A. I should say it was completed within the first week or ten days of September.

Q. Now, Mr. Kinzie, you were on the ground quite frequently between the time that Harry commenced building that trail along the flume grade and the time that it was completed?

A. I should say every three or four or five days—sometimes closer and sometimes a little longer period between. [733]

Q. At any time during that period of time while Harry was working on that trail and it was in course of construction, did you ever see anybody else on the ground except Harry and your other men—any men belonging to anybody except the Alaska-Juneau Company? A. No, I did not.

Q. Did you have any other men on that job during the month of August except Harry?

A. Yes, sir.

Q. How many others?

A. Three or four other men.

Q. What did they do?

A. They were clearing away at the side of the cabin and building the cabin, taking lumber up.

(Testimony of R. A. Kinzie.)

Q. What was the cabin built for?

A. To accommodate the men working on the grade.

Q. How long did those men work there?

A. I should say they were at work a week or ten days—I don't remember exactly.

Q. Now, did Harry get through with this preliminary work of running the trail along the line of the flume grade?

A. Why, that work was completed—that is, the trail was so you could walk from the tunnel, the Alaska-Juneau tunnel to the edge of the cliff along about September, between September tenth and September 14th—I was over there about that time.

Q. What is the character of the ground there with reference to the necessity of building such a trail before other work could be done?

A. The country is very steep along the side of Gold Creek, and [734] it is absolutely necessary to have some means of reaching the work and starting the work, and at one point it is impossible to get around it—it is precipitous cliffs.

Q. Was it necessary to build that trail before you did any other work? A. Yes, sir.

Q. What did you do after the trail was finished?

A. Before the trail was finished we had started the work on the upper tunnel—the upper tunnel had been measured out and located and the men had started to do work driving the tunnel.

Q. The upper tunnel—what tunnel was that?

A. The Alaska-Juneau tunnel just above the present grade of the flume.

(Testimony of R. A. Kinzie.)

Q. What was the purpose in driving that tunnel?

A. To convey the flume—to carry the flume underneath the canyon of Snowslide Gulch and bring it out on the other side and protect it from snowslides.

Q. What was the necessity for such a tunnel?

A. It was essential—there was no structure, no reasonable structure, that could be built at the bottom of Snowslide Gulch that could withstand the snowslides that occurred every year—they would be carried out.

Q. That made the tunnel necessary?

A. Yes, sir.

Q. When did you have the actual grade of the flume established on the grade, the setting of the grade stakes, do you remember?

A. I don't remember the first time, but the date I have in mind that we did the most of the work on was between September 10th and 12th. [735]

Q. You had a corps of surveyors up there at that time? A. Yes, it was surveyed at that time.

Q. What did they do?

A. They ran a line of levels from the point on Gold Creek just above the point of our present intake to a point where our tunnel had started—our upper tunnel of the Alaska-Juneau.

Q. What did you find with reference to that tunnel being in the right place?

A. If the tunnel remained in that position it would necessitate our starting our flume resting on the bed-rock with nothing to hold it in position, and furthermore it would give us a grade that would not be suffi-

(Testimony of R. A. Kinzie.)

cient to carry the volume of water we wanted without building a larger flume—that would accordingly increase the cost.

Q. Then, what did you do?

A. The upper tunnel was then—the men on the upper tunnel were then taken and put on the grade at which it was afterwards driven.

Q. How much of a tunnel did you drive there then—when did you change these men and put them down in the lower tunnel?

A. That was around the 12th—I was up there each day then. I have forgotten exactly.

Q. How far did you drive the upper tunnel?

A. The upper tunnel is in ten or fifteen feet.

Q. How far did you drive the lower tunnel—how far is that in by this time?

A. We are driving that tunnel from both ends. We started on the north side of Snowslide Gulch around the point, but the work during the winter has been confined to the south side of Snowslide Gulch. [736]

Q. Now, about the 12th you put on some more men. How many men did you put on about the tenth or twelfth?

A. Two or three additional men were put on then.

Q. They went to work in the tunnel?

A. They were in the tunnel; yes.

Q. What did you do next with reference to putting more men on the job?

A. At intervals of two or three days we increased

(Testimony of R. A. Kinzie.)

the crew and later on it amounted to between fifty and sixty men.

Q. When did your crew run up to fifty or sixty men?

A. That was at the time the rock work was being done around the cliff and the pipe-line being laid and the compressor being put in position and the compressor-house built.

Q. How many men did you have working there in September? A. The average for September?

Q. Yes.

A. I should say the average number of men for the month would be not more than six or seven.

Q. How many in October?

A. It might average ten or twelve men in October.

Q. How did the number of men you employed during August, September and October compare with the number of men that could be used to advantage on the job?

A. That is all the men that could be used to advantage on account of the character of the work.

Q. At any time during those months?

A. We used all the men we could to advantage.

Q. At any time? A. At any time; yes.

Q. When you used no one but Harry, how was that—was he the [737] only man you could use to advantage—could you use but one man to advantage?

A. Why, we considered at the time that one man was all that was required to do the preliminary work and start that grade—if we had more men they would be standing in each other's way.

(Testimony of R. A. Kinzie.)

Q. Now, explain to the Court how the work progressed from time to time in your own way, as you put on more men and what did they do—and give the dates as you go along, from and after the 12th of September when you commenced.

A. Well, the work was done at different places along the grade—it started with the tunnels at a point just northeast of the Alaska-Juneau cabin and the grade was continued along the east side of Gold Creek to where it met the face of the cliff—at that point—when we came to that point the men were put to work blasting out a shelf to hold the flume on the south end of the cliff and also men were put to work on the north end of the cliff building grade toward the crew working from the south end. In the month of October—the end of September or the first of October the dam was built and completed in its present position.

Q. At that time, by the first of October, the grade had been practically completed?

A. The grade was, I should think, two-thirds completed, up to the point of the cliff—that work had just started on October first. The dam was then completed and some work had been done the month previous at same point where our diversion was made, and all that was necessary at that time was to blast out a boulder and drop the first box and divert and get the flume into position.

Q. That was along about the first of October?
[738]

A. That was done on the third of October.

(Testimony of R. A. Kinzie.)

Q. Previous to this time the ground had been leveled off and the grade arranged for at the point where the dam was afterwards built? A. Yes, sir.

Q. What did you do, now, in October with reference to the building of that dam?

A. The dam was completed with the exception of some retaining walls, some wings, on October 3d or 4th.

Q. I hand you here a photograph marked Exhibit 12 and ask you to look at it and state what that line is there that runs from side to side on the picture.

A. That is the grade of the flume-line from the lower Alaska-Juneau tunnel up to the cliff, as it appeared on the morning of October 4th.

Q. How long had that been in that condition then?

A. The southern part of that had been completed for some time—the north end of the trail was not completed at that time—the men were using that to go to the point to work, the rock work at the end of that.

Q. How long had the flume been in the condition—the grade been in the condition in which it appears on that picture, the portion on the picture?

A. The work was still in progress.

Q. How long had they been working on that flume grade as it there appears?

A. At that particular grade?

Q. Yes.

A. That was along about, some time after the 12th of September. [739]

Q. Now, where is that grade situated with refer-

(Testimony of R. A. Kinzie.)

ence to the Parish #2 as platted on this Exhibit #7?

A. It is on the Parish #2, within the side lines.

Q. Where are the two tunnels that show in this picture? A. They are also on the Parish #2.

Q. Those tunnels both show in that picture, the upper and lower? A. Yes, sir.

Q. The picture referred to is Defendant's Exhibit #12? A. Yes, sir; 12.

Q. I hand you here another photograph and ask you to look at it. When was that taken and what does it represent—being exhibit heretofore marked No. 13?

Judge WINN.—We insist they identify these photographs in the proper way and have the photographer here.

Q. Were you present when that was taken?

A. Yes, sir.

Objection overruled. Plaintiff allowed an exception.

Q. What does it represent?

Judge WINN.—I object. I insist they have the photographer here. It is not the best evidence.

By the COURT.—You have waived that on this picture.

A. This photograph shows the south view of the Alaska-Juneau dam, the boxes, the lower part of Miller's Gulch and the flume of the Alaska-Juneau Company as it appeared on the morning of October 4th.

Exhibit 13 is offered and admitted in evidence.

Q. I now hand you another photograph marked

(Testimony of R. A. Kinzie.)

for identification Defendant's Exhibit #14 (it is so marked), and ask you to look at it and state what it is. [740]

By the COURT.—Were you present when that was taken?

A. I was; yes, sir.

Q. Proceed.

A. It is a picture—it is a photograph showing a portion of the upper structure of the Alaska-Juneau dam and the intake as it appeared on the morning of October 4th.

Q. Were you present when that picture was taken?

A. I was.

Q. Does it correctly represent the matters and things shown on the picture? A. It does.

Q. Are there any delusions about it?

A. No, I think not.

The picture is admitted in evidence as Defendant's Exhibit Number 14.

Q. I hand you another picture marked for identification Defendant's Exhibit # 15 (it is so marked) and ask you to look at it and state to the court what it is.

By the COURT.—Were you present when that was taken?

A. Yes, sir.

Q. Answer the question.

A. The photograph was taken in the vicinity of the dam of the Alaska-Juneau Company.

Q. When? A. On the morning of October 4th.

Q. Does it correctly represent the matters and

(Testimony of R. A. Kinzie.)

things represented or indicated on the photograph?

A. What is that question?

Q. I want to know if that correctly shows the things on the ground, whether there are any illusions or delusions about it. [741]

A. No, I think it correctly shows the conditions.

Q. Explain the picture to the Court what it shows.

A. The picture shows in the lower left-hand corner the flume of the Alaska-Juneau Company as it appeared on the morning of October 4th and it also shows the hillside from which the boulders were rolled down during the morning of October third; it also shows some of the boulders in position on the side hill and the canyon of Miller's Gulch.

The picture is admitted in evidence as Defendant's Exhibit Number 15.

Q. I now hand you a photograph marked for identification Defendant's Exhibit #16 and ask you to look at it and tell us what it is. Were you present when that picture was taken? A. I was.

Q. What does it represent?

A. It shows the side hill just above the dam of the Alaska-Juneau Gold Mining Company and shows the havoc resulting from the explosion of a blast that had just taken place.

Q. When was that picture taken?

A. The morning of October 4th.

Q. Does that correctly represent the matters and things as they appear at that time, on October 4th, when the picture was taken? A. It does.

The picture is admitted in evidence as Defendant's

(Testimony of R. A. Kinzie.)

Exhibit Number 16.

Mr. HELLENTHAL.—I now offer in connection with the testimony of this witness first a certified copy of the Mulligan location notice.

Judge WINN.—We object to it as incompetent, irrelevant and [742] immaterial and no sufficient foundation has been laid for the introduction of it, and this is the first notice that was testified to that was posted up the creek—they have never taken any water out of the creek under that location at that place.

By the COURT.—It is a certified copy of a recorded notice?

Judge WINN.—Yes, sir.

Objection overruled. Plaintiff allowed an exception. The copy is admitted as Defendant's Exhibit #17.

Q. I now offer the deed from Mulligan to the Alaska-Juneau Gold Mining Company for the water rights obtained under that notice.

Judge WINN.—We object for the same reason—it does not tend to prove or disprove any of the issues, and no foundation having been laid for the introduction of the water notice, makes the deed incompetent, irrelevant and immaterial for any purpose in the case.

Objection overruled. Plaintiff allowed an exception. The deed is admitted as Defendant's Exhibit #18.

Q. What did you do in the month of October in the way of pressing the work, looking toward the diver-

(Testimony of R. A. Kinzie.)

sion of the water of Gold Creek under the notice that has been offered in evidence?

A. The dam was completed; first the grade both from the tunnel and around the cliff. I think the rock work was completed in October and a portion of the flume-line or the box of the flume-line started.

Q. Did you turn the water out of the creek in October?

A. That was done on October 3d—diverted into the headgates of the flume and into the flume. [743]

Q. How much water did you turn out of the creek—how large was the flume?

A. 3x3 feet, filled with water.

Q. That same sized flume—the same grade as it is now standing? A. Yes, sir.

Q. What did you do after the water had been diverted on October third—what did you do about connecting it up?

A. The work was then continued until the flume was extended around to a point on the Colorado claim where the pipe-line and compressor was installed and the water has since been in use for driving the tunnel.

Q. When did you build your compressor on the Colorado claim—what did you do in the way of building a compressor on the Colorado claim?

A. A compressor and pipe-line was built connecting the end of the flume—

Q. When?

A. I think that was in the month of November.

Q. What was that compressor for?

(Testimony of R. A. Kinzie.)

A. For driving the main tunnel to the mines—

Q. The main tunnel—what tunnel do you refer to?

A. The main tunnel extending from the canyon of Snowslide Gulch to a point beyond, beneath the lower pit, what is known as the lower pit in Silver Bow Basin.

Q. The portal of that basin is on what claim?

A. On the Colorado.

Q. Where was that compressor built?

A. On the Colorado just above Gold Creek.

Q. That compressor was for furnishing power for the running of that tunnel and what else? [744]

A. Power and ventilation and what power was needed at that point for rock work, tool sharpening or any other use it might be put to.

Q. Was there any other tunnels to be driven with it besides the main tunnel?

A. Just the two—the main tunnel and the tunnel that would carry the flume underneath the canyon of Snowslide Gulch.

Q. That is the flume you started on about the 12th of September? A. Yes.

Q. Now, what did you do in the way of applying the water previously diverted by you to that compressor plant?

A. The water used to drive the compressor was installed for compressing the air.

Q. What water was used?

A. The water diverted from Gold Creek.

Q. How?

A. By means of the dam, flume and pipe-line as

(Testimony of R. A. Kinzie.)

shown in the drawing.

Q. How was it conveyed from the dam to the compressor?

A. It was conveyed first through a flume-line and then through a pipe-line to the compressor.

Q. Where is that flume-line with reference to the flume-line indicated on the map Number 7 for identification? A. It is the same flume-line.

Q. Where is the compressor plant with reference to the point marked "compressor" on that same map?

A. That is the compressor I am speaking of.

Q. Where is the pipe-line running from the flume to the compressor with reference to the line marked pipe-line on that plat? [745]

A. That is the identical pipe-line.

Q. When was it you applied the water to that compressor for the purpose of generating power, what was the date?

A. I don't remember the exact date. I would have to look it up.

Q. Can you refresh your memory and tell me later on? A. I could in the morning; yes.

Q. Now, from that time on what have you been doing with reference to continuing work looking toward the conveying of the water to the place where you intend to build your proposed mill?

A. The flume-line—the grade for the flume-line—was continued up to the time it was interfered with by snow last fall. It was graded for a distance of something over a thousand feet.

(Testimony of R. A. Kinzie.)

Q. This side of Snowslide Gulch?

A. This side of Snowslide Gulch; yes.

Q. What else did you do—continue driving that tunnel?

A. The men have been continuously at work all winter driving that tunnel; yes.

Q. How far in is it?

A. Something over 200 feet at this time.

Q. How far have you got to have it driven before it will be connected up?

A. I think that is something over 600 feet—6 or 800 feet.

Q. Where is the flume now with reference to that tunnel—it is not through the tunnel?

A. No; the flume is carried around the cliff so that it could be used, so we could get it into position for generating air so we could drive the tunnel with machine drills instead of by hand.

Q. That is temporary?

A. From the point marked tunnel around to the penstock is the [746] temporary grade or a temporary flume.

Q. Can a flume be maintained at the point where it is now,—that is, permanently maintained?

A. Not without a great deal of additional expense at that particular point—the worst part of it is at the end where the penstock is located. I don't think it could be maintained there.

Q. The practical scheme is to run the tunnel?

A. Yes, I think so; it is the safest anyway.

Q. Now, Mr. Kinzie, how has this work been car-

(Testimony of R. A. Kinzie.)

ried on by you from the first of August to the present time with reference to being continuous or otherwise?

A. It has been continuous—we have been at work continuously since we started there.

Q. How many men have you had at work from the first of August to the present time with reference to the number of men that can be used to advantage on the ground?

A. We are using all the men we think can be used to advantage.

Q. What have you done from the first of August to the present time in that behalf?

A. We have used every man that we could use to advantage so that the work would be pushed along just as fast as it possibly could, without undue expense.

Q. The waters at present being used by you in the compressor are permitted to run from there down into the creek?

A. It flows into Gold Creek at that point and flows down the channel of Gold Creek.

Q. How long have you been using the water in connection with the operation of that compressor?
[747]

A. Since last November.

Q. How have you been using it from November up to the present time—as to using it continuously or otherwise?

A. It has been used continuously.

Q. What is your intention with reference to the

(Testimony of R. A. Kinzie.)

future use of the water in connection with the driving of that compressor plant?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. That compressor plant will be maintained in its present position until the tunnel is completed; it is our intention to convey all the water after the tunnel is finished around to the shore of Gastineau Channel. You can convey air a good deal cheaper than you can water; you can get the benefit out of the water and take the air back over the same course much more economically than you can take the water out and waste it.

Q. You intend to use it until the tunnel is completed and then take the water out and use it at the beach? A. Yes, sir.

Q. Now, I will ask you when you first observed men other than your own men upon the ground covered by the Parish or Oregon locations?

A. In the latter part of September.

Q. Where did you observe them?

A. There was a man standing at the dump of their lower tunnel—the tunnel close to Gold Creek, at the south end of the cliff I have referred to above, immediately below our flume grade.

Q. Do you know George Bent? A. I do. [748]

Q. Did you see him in August of 1910?

A. Yes.

Q. Do you recall having any conversation with

(Testimony of R. A. Kinzie.)

George Bent with reference to this matter immediately or a short time before the suit known as "803, The Ebner Gold Mining Co. vs. the Alaska-Juneau Co." was commenced in this court? A. I do.

Q. Who is George Bent?

A. I understood he was in charge of the work at the Ebner mine.

Q. Relate that conversation—I mean the conversation dealing with this matter at issue now.

A. In the month of August I had a conversation with him with reference to our work, the work we were doing toward diverting the water from Gold Creek.

Q. You may state what that conversation was. I now ask what that conversation was.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial—no conversation he had with Bent would bind the Ebner Gold Mining Company and no foundation has been laid for the conversation—and it is hearsay.

Objection overruled. Plaintiff allowed an exception.

A. It was at the time the cabin—I think the cabin was just about completed at the time and we were then working just above on a trail. Bent called me and asked me what work we were doing at that cabin, and I told him we had started or were going to start a crew at work to build a flume-line and take the water from Gold Creek, and he said, "Well, on what ground is that?" And I said, "As far as I know it is on the claim of ours known as the or called the Ore-

(Testimony of R. A. Kinzie.)

gon," and I said, "Why, is there any dispute about it?" He said, "Well, I [749] will be over to see you about it." He said, "I will be over to-morrow," and I said, "All right."

Q. Did you have any further conversation with him?

Judge WINN.—We make the same objection—incompetent, irrelevant and immaterial, hearsay, no foundation laid and not binding upon the Ebner Gold Mining Company.

Objection overruled. Plaintiff allowed an exception.

A. The next day he called me up.

Q. Did you have any further conversation with Bent in regard to this matter?

A. He called me up the next day and said—

Q. What was that further conversation you had with him the next day?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. He called me up and informed me that his boat was scheduled to get in sooner than he had anticipated and that it would be impossible for him to get over to see me that day, but that he was going to Seattle and was going to return immediately, and upon his return he would come over and talk the question over with me—that was the end of it.

Q. Did you have any further conversation with Mr. Bent in reference to the matter at a later date?

A. I had at the time of the trial of the so-called Basin cases.

(Testimony of R. A. Kinzie.)

Q. What time was that—in the year? About what time, what month?

A. That was in December, if I remember correctly.

Q. What was that conversation? First, where was it? A. Here at the courthouse.

Q. What was the conversation? [750]

A. Same objection. Objection overruled. Plaintiff allowed an exception.

A. Why, I met Mr. Bent in the hall and I asked him, “I thought,” I said, “that you were going to be back immediately from Seattle and talk this matter over with me.” I said, “I don’t think it was exactly the way to do, to leave and immediately bring suit.” He said, “I didn’t know anything about the suit, when it was brought,” and I said, “Who brought it—your attorneys?” And I think it was Burch was standing with me and he broke into the conversation then and that is all there was to it.

Q. That is all there was to it? A. Yes.

Judge WINN.—We move to strike these conversations as incompetent, irrelevant and immaterial and not binding upon the Ebner Gold Mining Company, and hearsay.

By the COURT.—There are no admissions—it simply amounts to notice given to him by Mr. Kinzie. Motion denied.

Plaintiff allowed an exception to the ruling.

Q. You said about the 18th of September you saw a man on the lower tunnel of the Parish claim?

A. No; I think it was later than the 18th.

Q. About what date?

(Testimony of R. A. Kinzie.)

A. My recollection was it was either the 26th or 28th of September.

Q. How many men did you have at work on the grade on the flume line at that time?

A. Eight or ten; I don't remember exactly.

Q. All at work within the limits of the Parish claim as delineated on the map? [751]

A. They were, yes. I think some of the men were working on the sidehill. They were handling lumber and logs.

Q. Scattered along the flume grade?

A. No, it was not scattered along the flume grade—the lumber and logs were on the side.

Q. I am talking about the men.

A. The men were working on the flume grade on the sidehill.

Q. At one point or different points?

A. They were scattered along the flume grade from the tunnel over to the cliff.

Q. That is near the place where the dam was built—that cliff, you mean?

A. Yes, that cliff—it is some distance from the dam.

Q. How long had they been working along there when you saw the first man on the Parish lode?

A. Some of the men had been working there from the time the tunnel had started.

(Witness temporarily withdrawn to permit the examination of Mr. Pond.)

Witness excused. [752]

**[Testimony of Percy Pond, for Defendant
(Recalled).]**

PERCY POND, recalled.

(By Mr. SHACKLEFORD.)

Q. I now hand you a photograph marked Defendant's Exhibit #19 (it is so marked) and ask you if that photograph was taken by you? A. It was.

Q. At whose request? A. Mr. Stewart.

Q. Was he with you at the time it was taken?

A. He was.

Q. Is that a correct representation of the things set forth in the photograph? A. It is.

Q. What date do you know was that taken?

A. It was taken on the 23d of May, this year.

Q. The date is in the corner of the photograph?

A. Yes, sir.

Q. I will hand you another photograph marked Defendant's Exhibit #20 and ask you if that was taken at the same time?

A. It was taken on the same day.

Q. Was Stewart with you? A. He was.

Q. That is a correct representation? A. It is.

Q. I now hand you another photograph marked Defendant's Exhibit #21 and ask you if that was taken at the same time?

A. It was taken on the same day.

Q. Was Stewart with you? A. He was.

Q. And it is correct representation of the things set forth? [753] A. Yes, sir.

Q. I hand you another photograph marked Defendant's Exhibit #22 and ask if that was taken by

(Testimony of Percy Pond.)

you? A. It was.

Q. Was Mr. Stewart with you? A. He was.

Q. It is a correct representation?

A. Yes, sir, it is.

Q. I hand you another photograph marked Defendant's Exhibit #23 and ask if that photograph was taken by you. A. It was.

Q. What day was that taken?

A. On the 26th of May, 1910.

Q. At whose request?

A. At the request of Mr. Stewart.

Q. What is that a photograph of?

A. That is a photograph looking down Gold Creek from a point near the dam to which this flume leads.

Q. It is a correct representation? A. It is.

Q. I now hand you another photograph marked Defendant's Exhibit #24. Was this taken at the same time as #23?

A. Yes, sir, it was taken on the same day.

Q. Under similar circumstances? A. Yes, sir.

Q. It is a correct representation? A. Yes, sir.

Q. Just state to the Court what it shows.

A. This is a view looking up Gold Creek at a point about 100 feet below the dam which this flume leads to.

Q. Referring to all these photographs I have just asked about [754] they were taken in the vicinity of the water right of the Alaska-Juneau Company and the property claimed by the Ebner Gold Mining Company? A. Yes, sir.

Q. On or near Gold Creek? A. Yes.

(Testimony of Percy Pond.)

(By Judge WINN.)

Q. You mean the pretended water right, do you?

A. I don't know anything about that.

Q. (By Mr. SHACKLEFORD.) You mean the water right that appears there with the large flume extending some 100 feet down the creek, don't you?

A. Yes, sir.

Q. That is the Alaska-Juneau flume, the one on the right-hand side of the creek going up?

A. Yes, the one on the right-hand side of the creek going up.

Q. All these pictures that show any flume at all are parts of that flume that runs up there?

A. From Snowslide Gulch to the dam.

Q. On the right-hand side?

A. On the right-hand side; yes.

Q. Do you know anything about these corner posts—this is exhibit #10—do you know where that corner post is, that corner post over there near the cabin on the right-hand side of the creek going up?

A. It is the same post I took a photograph of last fall near that cabin.

Q. You took a photograph up there for us?

A. Yes, sir, I did. [755]

Q. And that is the same post?

A. That is the same post.

Q. Here is another one on exhibit 20—did you ever take a photograph of that same post for us too?

A. I did not.

Q. Where is that?

A. That is up the hill from that first post, about

(Testimony of Percy Pond.)

100 feet or so.

Q. (By Mr. SHACKLEFORD.) You mean up the hill from the post in 19?

A. Yes, up the hill from this post in #19.

Q. You saw the post, did you? A. I did.

Q. Was there any number on either that is not shown on the picture? It seems like there is a rock or cross in the way there.

A. It must be under the snow—I didn't see any number, U. S. S. number.

Q. That is all you saw?

A. That is all I saw.

Q. This Number 21 has a spade stuck in the ground—where is that?

A. That is the open cut referred to in the photograph that was admitted this morning.

Q. That was pointed out to you by Mr. Stewart as being an open cut of some kind that he wanted that to show up? A. Yes, sir.

Q. And that is the reason the spade is stuck in there? A. Yes, sir.

Q. What is that—ice or snow there?

A. That is snow.

Q. This one we have here, Number 24, shows two pieces of flume [756] apparently, one on the right-hand side of the creek and one on the left-hand?

A. Yes, that is the old Jualpa flume on the left-hand side.

Q. Where was that picture taken that refers to the dam across the creek up there that the defendants have put in?

(Testimony of Percy Pond.)

A. Right at the beginning of the flume—it shows a part of the dam structure there.

Q. That is near the intake of the flume?

A. Yes, right at the intake of the flume.

Q. And this little piece of dam around the corner there is part of the dam?

A. I believe that is part of the gate.

Q. This one #23 shows a part of the flume on the right-hand side of the creek as you go up—it is a flume claimed by the defendant company in this case?

A. Yes, sir.

Q. Was any other object pointed out to you to be included in this photograph except the part of the flume shown there?

A. I was alone when I took this picture. Stewart directed me to go up there and take a picture looking down the creek.

Q. Now, #22, where is that stake, do you know—can you describe any natural objects around there so I can tell?

A. That is still further up the hill from that bottom stake that I referred to near the cabin that I took last year.

Witness excused. [757]

**[Testimony of R. A. Kinzie, for Defendant
(Recalled).]**

R. A. KINZIE—Continuation of direct examination.

(By Mr. HELLENTHAL.)

Q. Where were the men working after the 12th of September on the grade, at what point on the

(Testimony of R. A. Kinzie.)

grade were the men working?

A. They were working all along the grade on the intake from the dam to the penstock.

Q. From the dam to the penstock?

A. Yes, sir.

Q. The dam—that is the point marked on the map exhibit #7 as the Alaska-Juneau dam? A. Yes.

Q. And thence to the penstock—that is the place where the pipe connects up with the flume and conveys the water to the compressor?

A. Yes, sir; it is.

Q. How were they working from that time on, until the flume was completed—where were they working, at what points and how were they working?

A. The work was distributed along the entire grade from one end to the other.

Q. How many men did you say now?

A. You mean the average number of men during that period?

Q. How many men did you commence with about the 12th of September?

A. On the 12th there were two or three men.

Q. And how did you increase them?

A. Increased to fifty or sixty at the time the final work was being done, the compressor installed and the pipe-line put in.

Q. What did you say as to the necessity of having that water [758] for the purpose of driving the compressor plant?

A. It is essential for driving the compressor plant.

(Testimony of R. A. Kinzie.)

Q. Is there any other source of power to drive that compressor? A. No other source.

Q. Now, when did you next see men—you were on that ground off and on every two or three days during that time?

Objected to as leading. Objection sustained.

Q. How often were you on the ground after the 12th of September?

A. After the 12th I used to go up there I should say on an average of three times a week.

Q. The first time you saw men on the Parish there was a man on the lower tunnel—what date was that?

A. That was either September 26th or 28th.

Q. When did you next see men on the Parish? Men other than men in the employ of your company?

A. You are talking of the Parish now?

Q. Yes, the Parish.

A. The next time I saw any men on the Parish was on October third.

Q. Where was that, what part of the Parish were they? A. They were at the same place.

Q. When did you next see men on the Parish?

A. On the morning of October 4th—there were men down at this tunnel.

Q. This same tunnel? A. Yes, sir.

Q. What were they doing?

A. When I saw them they were standing out on the dump looking at us.

Q. They were working in the tunnel part of the time? [759]

A. They evidently were, yes—Mike McKenna was standing there.

(Testimony of R. A. Kinzie.)

Q. Has there ever been at any time, from the time you first located the water to the present time, any habitation or other place where anyone can find shelter within the boundaries of the Parish #2 or the Oregon claim except your house that you have built? A. No, there is not.

Q. No habitation of any kind? A. No, sir.

Q. Do you know where the Canyon claim is located? A. Yes, sir.

Q. Were you present when the discovery was made? A. I was.

Q. Where was the discovery made?

A. At a point about thirty feet north of the dam of the Alaska-Juneau Company.

Q. Will you please mark it on the plat—#7?

A. It would be in here some place.

Q. Mark the point where the discovery was made on the Canyon with a letter "B"?

(Witness does so.)

Q. What did you find there in the way of rock in place, bearing gold or silver or other precious metals?

A. There was a well-defined stringer of quartz crossing the bed of Gold Creek at that point.

Q. What does it bear, what kind of quartz is it?

A. It is gold-bearing quartz.

Q. What kind of quartz is that quartz you discovered on the Oregon you testified to this morning?

A. I testified to it as being gold-bearing quartz.

[760]

Q. What did you do with reference to making a

(Testimony of R. A. Kinzie.)

location of the Canyon claim at that time or what did you have done?

A. The men who made the location were present on the ground at the time he posted his notice.

Q. (By Judge WINN.) Were you present when he posted the notice? A. No, I was not.

Q. Were you present when he drove the stakes?

A. No, I was not.

Mr. HELLENTHAL.—I will offer the location notice of the Canyon.

Judge WINN.—We object to it as incompetent, irrelevant and immaterial; no proper foundation laid for its introduction.

Mr. HELLENTHAL.—We will follow that with evidence of the locator.

Objection overruled. Plaintiff allowed an exception.

The location notice is admitted as Defendant's Exhibit #25.

Cross-examination.

(By Judge WINN.)

Q. When did you say you first came to Alaska?

A. About—a little over ten years ago.

Q. What position with the defendant company or with the Treadwell Company did you first occupy when you came here?

A. Assistant superintendent—of the defendant company?

Q. Yes. A. Assistant superintendent.

Q. And what of the Treadwell Company?

A. Assistant superintendent.

(Testimony of R. A. Kinzie.)

Q. Who was the superintendent at that time?

A. Joseph McDonald.

Q. Ten years ago—that would be in 1901?

A. That would be 1901; yes. [761]

Mr. HELLENTHAL.—If counsel will pardon me a moment—I want to ask a few additional questions.

(By Mr. HELLENTHAL.)

Q. Do you know what Mr. McDonald's authority was with reference to the sale, abandonment or other disposition of property of the Alaska-Juneau Gold Mining Company?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, no foundation laid, and it is not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. I do.

Q. What was his authority?

A. He could not dispose of the property belonging to the corporation.

Q. Did he have any authority to abandon property?

A. He had not, without instructions of the Board of Directors.

Judge WINN.—We desire to make the same objection.

Objection overruled. Plaintiff allowed an exception.

Q. Do you know John Lund, United States deputy marshal? A. No, I do not.

Q. You don't know him at all?

(Testimony of R. A. Kinzie.)

A. No, I do not.

Q. You heard the testimony with reference to Mr. Lund, United States deputy marshal, being up there in the Basin during the trouble?

A. Yes, sir.

Q. Did he have any connection with the Alaska-Juneau Gold Mining Company?

A. None whatever.

Q. Did you have any dealings with John Lund at all? [762]

A. Never spoke to the man Lund that I know of.

Continuation of Cross-examination.

(By Judge WINN.)

Q. Who was superintendent when you came here?

A. Joseph McDonald.

Q. How long did he remain superintendent of the defendant company?

A. I think it was some time in 1905,—either 4 or 5.

Q. He remained superintendent of that company until the time he left here? A. Yes, sir.

Q. Do you know what time it was—whether it was four or five? A. I think it was 1905.

Q. And during all of this time, during the superintendency of Mr. McDonald, you remained as assistant superintendent of both of these corporations that he was superintendent of? A. I was; yes.

Q. Now, Mr. Kinzie, did you pass any of your time over here during say from 1901 to 1907—did you pass much of your time on this side of Gastineau Channel looking after the defendant Company's property?

(Testimony of R. A. Kinzie.)

A. I had practically the entire charge. Mr. McDonald went up there very seldom.

Q. During those years how frequently would you make trips over here and go up the Basin road?

A. Three or four times a week.

Q. During that period?

A. During the summer period, during the working season—winter time I did not.

Q. You usually had the same sort of a system up there—had a foreman up there at the mill in the basin? [763]

A. There was a man in charge there; yes.

Q. When did you say, so far as you are concerned you conceived this plan of opening up the property that Mr. Hellenthal has questioned you so much about?

A. I think the plan originated the year before I came here, that is the main outline—the detail was afterwards added to.

Q. It wouldn't take much of your time to figure out, knowing the contour of the ground and where your five and thirty-stamp mills have been located and taking into consideration the water power you have been using, it would not take much time to figure out that is not a proper place to build a mill?

A. We are well aware of that fact.

Q. That has always been conceded that the way of opening up and developing a mine—this property—it could not be done way up there in the mountains where you have this five or thirty-stamp mill?

A. No; there was a scheme spoken of at the time,

(Testimony of R. A. Kinzie.)

but I don't think it was seriously considered, of building a mill up there—

Q. You have taken quite an active part in the prosecution of these civil and criminal cases in court pertaining to this Ebner property?

A. I have; yes, sir.

Q. Do you remember the case that was first brought in this court, 803-A, in which the Ebner Gold Mining Company made application to this Court for a temporary restraining order against your company?

A. I do, yes, sir; that was the original suit?
[764]

Q. Yes, the first one brought?

A. Yes, I remember.

By the COURT.—What is the date of that complaint—the verification?

Judge WINN.—The verification of the original complaint in 803-A—August 26th?

Q. On the hearing of that case, at some stage or other, you made and signed and swore to some affidavits, did you not? A. Yes.

Q. I will hand you here an office copy of an affidavit and I will present the original to you if you desire it—it is an affidavit filed in case #803-A—and call your attention to the last paragraph on page 3. I hand you the original of that affidavit and ask you if that is your signature to it?

A. It is; yes.

Q. I will ask you if you remember this portion of your affidavit which I have just exhibited to you:

(Testimony of R. A. Kinzie.)

That the Alaska-Juneau Gold Mining Company for the past three years has been actively engaged in work looking toward the construction of the contemplated mill and looking toward the carrying out of plans disclosed in the answer; that if the said company were enjoined at this time from prosecuting their work it would delay their completion of the entire scheme for a period equal to that during which said temporary order might remain in force. Do you remember that being in your affidavit at the time you swore to it? A. I do.

Q. When did you commence contemplating this scheme of opening up—was it three years ago or a longer time? [765] A. It was both.

Q. Take the affidavit—you state that you commenced active work three years ago looking towards the opening up of this property in the manner you have testified concerning—what particular steps of activity did you make three years ago that you did not make prior to that time?

A. That was the original mapping and determining of the faulting that cuts off our ore body at the southwest end—what is known to us anyway as the Silver Bow fault. About four years ago we struck a side fault and it was opening up that body and driving the upper tunnel through it and locating this fault with regard to the ore bodies that show in our lower tunnel for part of the way.

Q. What particular act had you pursued of this plan prior to three years ago?

A. In fact, all the work that was done in the

(Testimony of R. A. Kinzie.)

Alaska-Juneau we considered as comparative preliminary work. It was the same stamp-mill scheme from beginning to end, and each year the tunnels crosscuts and open pits were continued with that object in view.

Q. Where is this long tunnel you testified concerning this morning that Mr. Hellenthal was cross-examining you about? I believe you stated you spent several thousand dollars on it. Will you indicate it on this map and plat that you have been testifying about? A. No, I can't show it on that plat.

Q. Exhibit Number 11, Identified Exhibit No. 11—where is the tunnel? Please point it out.

A. The tunnel starts from the Aurora claim at a point. It would be about 400 feet due south of our compressor building; [766] it would practically start at the point where that is marked "B"; that is the five-stamp mill and that is where our mill tunnel starts, but the other long cross-cut tunnel was at a point at the junction, I think, of the Fuller with the Aurora claim.

Q. I wish you would mark there the direction those two tunnels you are just describing run.

A. They run in this direction.

Q. Mark it—commence at D.

A. Yes, sir; it would run like this and the other started at the side line here and came in up to the lower pit—turned off at an angle of 45° and ran through the gulch there.

Q. And those tunnels are not to be used as working tunnels but just simply run for the purpose of

(Testimony of R. A. Kinzie.)

sampling and determining the value of the ore bodies.

A. The tunnels were primarily crosscutting the ore body in depth to determine its values and continue the values to that depth.

Q. If the tunnels had been running straight on and not turned at the angles you have indicated, they would come out somewhere near Sheep Creek?

A. Yes, sir.

Q. The tunnel that turns off in an angle of 45° wouldn't be a very good working tunnel, would it?

A. Oh, yes.

Q. Turning a sharp corner of 45° it would be a good tunnel to work the property through?

A. Yes, you could turn it 90° .

Q. Have you stopped work on those two tunnels?

A. No, sir, we are working at the present time in the lower [767] mill tunnel, cutting off the sampling strip. The work of driving the tunnels ahead is not being continued at this time. We are cutting off the sides of the tunnel and running what are known as sorting tests.

Q. Now, you said this morning that you made a considerable examination of what is termed the Parish #2 claim in endeavoring to sample it to find out whether certain rock you found there carried any values or not. Now, on the exhibit which we have offered in this case marked Exhibit "N," I wish you would show the Court there where you made these particular investigations of the surface ground to find out whether there was any rock there in place or any that carried values? A. On the Parish?

(Testimony of R. A. Kinzie.)

Q. Yes—the Parish #2?

A. The work on the Parish 1 part you can see a cross-section where our two tunnels are at present and along the side of Gold Creek.

Q. That is where you made your investigation you testified to this morning that you did not find any rock in place and about the slide, etc.?

A. No, that was above that on the bench.

Q. That is what I am speaking about?

A. That is over here (indicating).

Q. Over at the Borean Pit, which is marked on this exhibit as an open cut, somewhere in that neighborhood?

A. Right there where it is marked open cut.

Q. Did you sink any shaft there or do any washing off or remove any earth to find out as to whether you could discover any rock in place or not bearing mineral? [768]

A. I did not.

Q. You were giving your opinion principally this morning from looking at the ground—when you gave your evidence as to the approximate depth, you thought the slide was at those different points?

A. I did.

Q. You didn't sink any shafts or run any open cuts or any tunneling or in any wise remove any of the earth to any depth to find out anything?

A. I moved no earth.

Q. Then, I understand that your testimony in that respect was chiefly testimony given judging from the formation of the ground there, etc.?

A. As to the depth of the gravel?

(Testimony of R. A. Kinzie.)

Q. Of the slide; yes.

A. Yes, sir; you can get two sections of that property—three sections.

Q. Well, now, you don't attempt to state to the Court, do you, if you moved off sufficient of that slide to get down to bedrock, you don't know what there is under there, do you?

A. We have a very good idea; yes.

Q. How positive would you be—if you should go and sink a shaft there until you got to bedrock, how positive would you be in your evidence now, from the knowledge you have, whether or not you would find any rock in place or ore carrying values?

A. Certainly you would find rock in place and I am so positive—well, I am practically sure of what the character of the bedrock would be, as you have the strike of the country in the cross-section given by Gold Creek. You have the same [769] strike and the same character of country just beyond in Snowslide Gulch, so that the strike of the country is directly through that point.

Q. Well, the strike of the country almost runs parallel with all these claims located up here including your Canyon claim and the Parish and Lotta and Taku?

A. No, the lower part runs at a slight angle to it.

Q. What do you mean by the lower part?

A. There is a faulting or a slipping just inside the Parish claim at a point just where the Borean pit is.

Q. Would you want to base your opinion of the formation you discovered there without sinking a

(Testimony of R. A. Kinzie.)

shaft or going down to bedrock—would you want to put an opinion of that kind against the opinion of a man who has absolutely gone down to bedrock and taken the rock and sampled it?

Objected to as argumentative. Objection sustained.

Q. As a mining man, I want to see how you estimate testimony—would you take the opinion of an expert who had not gone down to bedrock as to the value of that rock as against one who had gone down and made an examination and made the test?

A. If he had gone to bedrock and made the test I would take his word.

Q. When was it you made these investigations you testified concerning this morning to find out and ascertain whether there was any rock in place or any valuable ore bodies upon the Parish #2 claim?

A. Did I testify that there was any valuable ore bodies on the Parish #2 claim?

Q. No, but the investigations you made which you state did not result in the discovery of any—when did you make [770] these investigations regarding this country?

A. As to Miller's Gulch and Snowslide Gulch I went over it in detail last Sunday.

Q. You know that if this Canyon claim which you located is a mining claim, with sufficient indications to convince you that there is something there to locate—if that Canyon claim has a point of discovery at the point you indicated on your map a while ago and has its side lines parallel to the Lotta loc'e claim and tak-

(Testimony of R. A. Kinzie.)

ing in part of the Parish and part of the Lotta—if that is true, you thought there was sufficient indications to make a location there?

A. On the Canyon?

Q. On the Canyon. A. Yes, I thought so.

Q. Now, you testified this morning quite a bit on direct examination about the Oregon lode claim—when did you first know anything about the Oregon lode claim that was located by Corbus?

A. When I first came up here.

Q. In 1901?

A. Either 1900 or 1901—the first time I went over the maps.

Q. And you saw that delineated on some of the maps in the office of the company?

A. Yes, that was a group of claims they thought of locating at the same time.

Q. Now, when did you make any investigation to find out whether the Oregon lode claim as located by Corbus carried any valuable ore or any rock in place?

A. Why, I went over that entire group the first season that I was up here—the first summer. [771]

Q. Did you make any investigation particularly of the Oregon lode claim?

A. Of that claim in particular?

Q. Yes.

A. No, I did not. I went on as quick as possible on each of our claims.

Q. Did you make any particular investigation of the Wyoming? A. I was upon the claim.

Q. In this case #803-A, in this court, which was

(Testimony of R. A. Kinzie.)

commenced first by the Ebner Gold Mining Company your company, I believe, filed an answer in that case. I will ask you if you verified that answer and if that is your signature? A. Yes, sir, it is.

Q. And that answer was filed on September first, 1910. In that answer that was filed in that case you made no pretensions to claim any of the ground in controversy except under the old Oregon lode located by Corbus and what you termed the Wyoming lode claim, did you?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant, and immaterial and not the best evidence.

Judge WINN.—We desire, then, for the sake of showing what they predicated their defense upon in that case and for that matter alone, to offer in evidence the answer—I don't mean the supplemental or amended answer, but the answer in that case—and have it marked as an exhibit and have it copied eventually in the record.

Objected to as incompetent, irrevelant and immaterial.

Objection overruled. Defendant allowed an exception.

It is marked Plaintiff's Exhibit "CC," copy is attached hereto and made a part hereof. [772]

By the COURT.—Is that a live case, 803?

Judge WINN.—No, sir, that is the injunction suit—it has been dismissed.

Q. Now, at the time this answer which I have just identified having been filed on the first of September,

(Testimony of R. A. Kinzie.)

1910, the answer to the complaint in 803-A, at that time you knew your company was making some claim to the property in controversy under the Canyon lode claim and also the Oregon location as made by Datson, did you not? A. I did, yes. That was September?

Q. September 1, 1910? A. Yes.

Q. In setting up in your answer a defense to that action set up in the complaint why was it you didn't claim the property in that suit under the Datson location but under the Corbus location?

A. I don't really remember what was set up in that answer at the time.

Q. You talked with Mr. Hellenthal, your attorney, and gave him what you supposed to be the facts concerning the title you were claiming to the property in controversy?

Same objection. Objection overruled. Defendant allowed an exception.

A. Why, yes, we talked the case over a great many times.

Q. In addition to the tunnels you have just described to the Court that you ran on some of the property of the defendant company commencing some three or four years ago, what other active work have you been engaged in on this property up to say July, 1910,— what other active work have you been engaged in on this property?

A. You mean on the entire property. [773]

Q. Yes.

A. Why, there has been a series of tests run every year from those cross-cut tunnels and from the open

(Testimony of R. A. Kinzie.)

pits on the top and the driving of the drifts, raises and cross-cuts from the various tunnels that have been driven and we have from time to time had other property that we thought might be needed in the prosecution of the plan—something might come up that we thought would be of use to us and then that property would be required.

Q. That has been actively carried on you say for the last three or four years?

A. No, we have carried no property except by location for the last three or four years—the principal work has been of a geological nature; we have been following out the bearing of the faults and particularly the large fault, the Silver Bow fault, with reference to what throw it would have on our ore bodies in depth and also the character of the rock itself, which was a very important item.

Q. That is all preparatory work for your information and upon which information you concluded upon the best plan for opening up and mining the property?

A. The best plan and the character of the plant itself and the character of the mill, for instance.

Q. It furnishes you with the information upon which you would direct certain subsequent running of tunnels and would lead you to the conclusion where would be the best place to put your mill and all those things? A. It would.

Q. Now your work really looking towards the opening up of this property on the scheme Mr. Hellenthal laid out this morning has been principally over the

(Testimony of R. A. Kinzie.)

last three or four years. [774]

A. No, indeed, most of the money has been previous to that time; that is, as far as money goes.

Q. How much money did I understand you to say this morning you had expended in running these tunnels which you have marked on your identified exhibit "11"?

A. I didn't say how much money it took to run these tunnels.

Q. The amount you testified to this morning when Mr. Hellenthal asked you how much money you had expended—you placed it at how much, do you remember? A. I think it was between 520 and \$530,000.

Q. That is extending over what period of time?

A. I think that is over eleven years.

Q. Since the time you first came here?

A. Since the time I first came here; yes.

Q. You mean you have spent that much money in working the property, do you?

A. In working the property; yes.

Q. Did you purchase any property with any portion of that money?

A. Yes, there was one piece of property purchased.

Q. You mean that is about what the property stands you, do you?

A. No, it doesn't include the purchase price or anything of that sort—this is simply a piece of ground, at the time we were considering building a mill in the Basin; that was six or seven years ago.

Q. You testified this morning concerning this identified exhibit No. 11 and said that the property

(Testimony of R. A. Kinzie.)

that is colored around with pink is the property that belongs to the defendant company.

A. Either belongs to the Alaska-Juneau Company by location or patent and there is a part just below that we have practically [775] under option, with a part of that property which has been disputed.

Q. Commencing up here with the word tunnel, which is a narrow point on your exhibit 11, and coming on down the creek, do you claim to the Court that you own all that property down here, clear down to the beach? A. We do.

Q. Don't you cross John Reck's property, that he has applied for a patent for, and Caro?

A. Yes, I believe there is some conflicting claims there.

Q. You know they have the claims there and had them surveyed for patent?

A. No, I do not. I know they were surveying there.

Q. Haven't you been over to Caro and been over to Reck and did you make a settlement with them about going over that property—if you could cross it?

A. I have.

Q. You have never adjusted that matter?

A. Not with them, but that was a very small thing to be done there.

Q. What other property do you cross over that you know is claimed as a mining claim, coming down to the beach?

A. There is no other property except one piece our pipe-line crosses and the mill—I believe that belongs

(Testimony of R. A. Kinzie.)

to—I believe Shattuck claims it and there has been an adverse to that.

Q. And when you get down to the shore, to the beach, you encounter what is called the Lincoln lode claim owned by Shattuck & Reck?

A. I just said there is a piece of ground there—we have practically secured a piece taken out of that.

[776]

Q. Have you bought a millsite off that property from Reck & Shattuck?

A. We haven't bought it; no.

Q. You haven't even an option for it?

A. We have an oral option, yes, Shattuck and I. When Mr. Bradley was here Mr. Bradley talked it over with Shattuck and it is simply a question of price. At the present time we own the next claim, the outer claim, which would be an extension of our flume-line of perhaps a thousand feet; something like that.

Q. Did Mr. Bradley have any understanding with Shattuck in your presence about the purchase of this millsite down here? A. He did.

Q. The only thing talked over at all was how much Shattuck wanted and how much you wanted to pay and you left the whole thing in that condition?

A. Not at all.

Q. You know Reck is interested in that property?

A. We found that out later.

Q. Have you had any arrangements made with Reck by which you would get a millsite down here on the beach? A. I have.

(Testimony of R. A. Kinzie.)

Q. Have you concluded that arrangement?

A. Reck's arrangement is—whatever arrangement Shattuck makes is agreeable to him.

Q. That is the only understanding you have at present—you have no paper writings concerning it?

A. No.

Q. It was merely a conversation?

A. I consider that more than a conversation—Shattuck has promised us we can have a right of way from our Bear claim [777] down to the beach.

Q. Where is the Bear claim?

A. That is the point our flume shows on.

Q. Indicate it on this map.

A. Right here (indicating).

Q. What is this proposed flume and tram along where those letters are—are there any mining claims, anybody laying claim to that except you?

A. I never heard of it.

Q. Where is the Shattuck claim represented there?

A. The Shattuck claim came around by Chief Johnson's house and comes around the Jorgenson sawmill.

Q. And it represents the ground where you have this *darm* triangle marked near the proposed 200-stamp mill?

A. That portion has been excluded, that has been taken out from the patent as applied for by Shattuck.

Q. Does that belong to you or your company?

A. No, it does not.

Q. Then, the ground you have the proposed mill marked on here does not belong to your company?

(Testimony of R. A. Kinzie.)

A. We have an option, by paying so much for that property, that as soon as the status of the present litigation has been settled, we will get it.

Q. You have a written option on that?

A. It is not a written option.

Q. You have the same sort of oral agreement with the parties who own it?

A. We have an oral agreement.

Q. With whom? A. With the natives.

Q. Do you expect an oral agreement with a native to be worth [778] very much in the transfer of property? A. That kind of property, yes, sir.

Q. The only title you have, then, to this proposed 200-stamp millsite or location you have marked on this plat and map is the promise of some natives who live down there that they may transfer to you, an oral promise? A. Not at all.

Q. Have you any paper writing with those natives?

A. No; no paper writing.

Q. You have their oral word?

A. We have the oral word—

Q. Of the natives—and you have the oral word of Shattuck something about—that he will give you a right of way down there across the property too, have you? A. We have.

Q. And Mr. Reck?

A. I consider it so—from Reck. You are talking about that particular spot all this time?

Q. You know that Shattuck has applied for a patent and it is pending before the Land Office now for at least part of this rectangular piece of property near

(Testimony of R. A. Kinzie.)

where you have the black triangle marked the proposed 200-stamp mill?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. I do.

Q. Now, then, coming on back up your proposed flume and tram line, you run along on this hill from Juneau? A. We do.

Q. About how far up the hill?

A. That would be about 430 feet long there, perhaps a little more. [779]

Q. That is, do you mean 430 feet from the line of ordinary high tide on Gastineau Channel?

A. Yes; mean high tide.

By the COURT.—You mean straight up?

A. Vertical; yes, sir.

Q. How far would it be if you followed the surface of the ground up the hill?

A. I should say twice as far; perhaps a little more.

Q. How far up on this map and plat, what point, do you strike the property claimed by Reck and Caro?

A. At Wood's Gulch.

Q. Would you indicate it on this exhibit No. 11 of yours that has been identified?

A. It is either this point or this point—I have forgotten which.

Q. Mark it there, will you, by "m" and "n"?

A. Yes. (Witness does so.)

Q. Now, have you secured any right of way from

(Testimony of R. A. Kinzie.)

Caro and Reck across that property?

A. We don't consider it necessary.

Q. You know they have what they claim to be a valid mining claim there—a valid mining location?

A. It makes no difference.

Q. You contend, of course, you have a right to go over that property of theirs even if they have a valid mining location there, do you?

A. We have a right by condemnation.

Q. You claim you have a right to condemn a right of way across private property for private uses by condemnation, do you?

Objected to.

By the COURT.—He has answered he did. Objection sustained. [780]

Q. Now, as a matter of fact, though you have been claiming a right of way across that property by reason of you being a corporation, vested with the powers of condemnation, you have had some of your people over there to locate right over all that property, have you not—mining claims?

A. That was before we knew there was any mining claims there. Just as soon as I found it out I went to these people and asked them if they had mining claims there, and then I went on the ground and they showed me where their mining claims started.

Q. Some time last July you got very active up on Gold Creek and was prosecuting this scheme of good intentions very rapidly to the front, to open up this property? A. No, I couldn't say that.

(Testimony of R. A. Kinzie.)

Q. In July, on the 28th you had Mr. Datson make a location up there, did you? A. I think no—

Q. Location of lode mining claim, located July 28, 1910, and recorded on August 8, 1910—is that the Datson location?

A. That is not my recollection of the date—it might be.

Q. Location of water right by L. D. Mulligan on the first day of August, 1910, and recorded August 11th, 1910—that is about the time you had Mulligan go up there, is it not, to make a location?

A. Yes, sir; that is right.

Q. How do you know he went up there on August first?

A. Principally because he told me so and I saw the notice posted there.

Q. That is the way you get your information?

A. That is the way I get my information. [781]

Q. You had the location of the Bear lode made July 11, 1910, by W. Lindsay, didn't you—recorded August 8, 1910?

A. Yes, somewheres in that neighborhood.

Q. And you had another location, Bear #2, W. R. Lindsay, July 11, 1910?

Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

Objection overruled. Defendant allowed an exception.

Q. Location Notice, Bear #2, W. R. Lindsay, July 11, 1910—I believe you say you had such a location as that made? A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. And the location of the Bear #3 lode, W. R. Lindsay, July 11, 1910—you had another location made by him, recorded August 8, 1910?

A. Yes, I think there are 6 or 7 Bear claims.

Q. And the Bear #4 July 11, 1910, recorded August 8th?

A. I think so, yes—in fact, I know so.

Q. And then the Bear #5 made by J. F. Tompkins July 11, 1910—that is another location you made?

A. Yes.

Q. Then you had the Utah #3 located by F. F. Summers, July 28, '10? A. Yes, sir.

Q. And the Utah #2 located July 28, 1910, by the same man? A. Yes, sir.

Q. These men are all in your employ over at the Treadwell? A. They were.

Q. They made these locations, did they not, for the defendant company in this case? A. They did.

Q. Would you indicate to the Court on this exhibit #11 approximately [782] what ground these nine or ten locations I have read to you cover?

A. They cover the ground starting from our Idaho down here to the point on the Utah claim—some point in here.

Q. It commences about the word—where you have a tunnel? A. The word “tunnel.”

Q. Marked on what claim?

A. On the Colorado claim on the east side of Gold Creek and around on the Gastineau Channel side to a point about 800 to a thousand feet. The Bear lodes are continued to our Summit claim—they continue to

(Testimony of R. A. Kinzie.)

and lap over our patented Summit claim.

Q. That series of claims that I have indicated—how many of them were you on the ground at the time they were located and saw them located?

Objected to as not proper cross-examination and immaterial.

Objection overruled. Defendant allowed an exception.

A. You mean, was I on the ground and saw the notices posted?

Q. Yes, at the time the location was made.

A. No, I was not.

Q. Now, as to the particular date that location was made with respect to the posting of the notice on the ground—you only take hearsay for that, is that right? I mean all these locations I have just questioned you about. A. No.

Mr. SHACKLEFORD.—The Bear or any of the locations in controversy in this case?

Q. I asked you, Mr. Kinzie, all that you knew as to the date that any of these particular claims were located on the ground—you necessarily know it by hearsay, don't you? [783]

Mr. SHACKLEFORD.—I desire to inquire of counsel what claims he includes in his question.

Judge WINN.—I include all the claims I have just mentioned to him.

By the COURT.—He means the seven Bears and two or three others, making eleven claims.

Mr. SHACKLEFORD.—We object as incompetent, irrelevant and immaterial and we move to

(Testimony of R. A. Kinzie.)

have counsel specify the claims in his question.

Objection overruled and motion denied. Defendant allowed an exception.

A. Some of them I saw the notices and some I did not.

Q. That is, you saw the notices at the time the claimant posted them on the ground or saw them there afterwards?

A. Saw them there afterwards.

Q. You were not on the ground on any one of these claims I have just mentioned to you in the previous question at the time the notices were posted there?

A. No, I was not.

Q. Were you on the ground at the time that the notice was posted on the Canyon lode claim?

A. No, I was not.

Q. Were you on the ground at the time that the notice was posted on the Oregon lode claim that was located by Datson? A. I was not.

Q. All, then, that you know about the time that that was done on the ground would be information you got from them or what you afterwards saw on the ground yourself? A. Yes, sir.

Q. When did you see the location of the Oregon which was located [784] by Datson—did you ever see that location on the ground? A. I did.

Q. When did you see that?

A. That might have been—it was a few days afterwards.

Q. You don't just remember the date?

A. No, I don't just remember the date.

(Testimony of R. A. Kinzie.)

Q. When did you see the location notice of the Canyon lode claim?

A. I saw that either the same day or the day afterwards.

Q. When did you see this water location that was posted on there by Datson—the first water location that was offered in evidence?

A. I think that was August third, I saw that.

Q. You saw it on the ground on August third?

A. Yes, sir.

Q. Would you be positive of that date?

A. Yes, I am quite positive of that.

Q. What makes you so positive?

A. No, I am not exactly positive—it is either the third or 6th, I have forgotten which of those days I went up there, but I think it was the third.

Q. I think that is what you stated this morning, it was either the 3d or 6th, on your direct examination.

A. Yes, sir.

Mr. SHACKLEFORD.—Are you referring to a water location by Datson?

Judge WINN.—Yes; I said the first water location made by Datson, that is, the first location he made—I mean the first water location on the ground, on the creek, in 1910 was [785] made by Mulligan.

The WITNESS.—Yes, sir.

Q. I had reference to that water location and I miscalled the name,—I meant to say Mulligan and that is the one you understand I was questioning you about—the Mulligan location?

A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. Do you remember what date in 1910 Mr. Bent and his party arrived here in Juneau?

A. No, I do not.

Q. Don't you know that Mr. Bent and Mr. O'Boyle and Mr. Briggs and his party arrived here on the 28th of July, 1910? A. No, I do not.

Q. When was the first time that you knew that that party was in town?

A. I think the first I knew about it—I think it was Mr. Mullen asked me if he could bring those people over, if I would show them around the works, and I told him I would—that was the party—O'Boyle was among them, and O'Boyle's son, and some others.

Q. You subscribe for the newspapers over here, one of them? A. I think both of them.

Q. Did you see the notice in the paper about these parties being here about that time?

A. I very likely did. I don't remember now whether I did or not.

Q. They visited with you over there some time shortly after their arrival here?

A. I think it was shortly after their arrival; yes.

Q. Don't you know they came here for the purpose of opening up this Ebner mining property on a larger scale than it had been run—didn't you know that was the object of those people [786] coming here?

A. I had a general idea they had taken over the interests of the Ebner Company, that is the way I understood it. We didn't talk about it at all.

(Testimony of R. A. Kinzie.)

Q. Upon the arrival of these parties here about that time, or shortly afterwards, you got pretty active up there in the Basin, didn't you, with your different clerks, etc., making location for the defendant company? A. I think not.

Q. You don't think so? A. No.

Q. Don't you think that the making of these eleven or twelve locations I have read over to you, besides the location of the Oregon claim and the location of the water right, and you commenced to put that little house up there—don't you think that was a little more activity than you had shown for a good many years past in Gold Creek?

Objected to as argumentative. Sustained.

Q. Well, all these locations I have read to you were made about the time or after the arrival of that party here in town?

A. No, they were made just after the arrival of Mr. Bradley.

Q. They were made shortly after the arrival of Mr. Bradley?

A. They were made shortly after the arrival of Mr. Bradley.

Q. If the Bent people got here on July 28th—there was quite a number of them made shortly after that date?

A. Yes, I think Mr. Bradley either came up on the same boat or just after they came up—that thing had all been worked out for Mr. Bradley and submitted to him when he arrived and he approved the plan, and we went ahead and carried it out.

(Testimony of R. A. Kinzie.)

Q. Mr. Bradley got here about the same time Mr. Bent got up here? [787]

A. Just before or just after.

Q. And Mr. Bradley is the consulting engineer of the defendant company and also of the Treadwell Company and several other big mining companies?

A. He is the president of that company.

Q. He is the president of the defendant company?

A. Yes, sir; and he is also the consulting engineer.

Q. Where does he live? A. In San Francisco.

Q. He is in the mining business generally, in a good many states and territories of the United States? A. He is; a great many of them.

Q. Not only in Alaska? A. No.

Q. He keeps pretty well informed on all of the methods of mining development and the development of mines along the coast here and in the coast states?

A. Only in a general way. He is not as active in outside properties as he was a few years ago.

Q. He is very active, though, in property in which he is interested? A. Very active.

Q. And he is president of the defendant company?

A. He is.

Q. Did you go up there with any of these parties that made any of these locations that I have just mentioned to you? A. Did I go up with them?

Q. Yes. A. No, I did not.

Q. They advised with you before they went up there? [788]

A. I gave them their directions, and some of them

(Testimony of R. A. Kinzie.)

a sketch—in fact, I believe we furnished them all a sketch.

Q. You didn't have to resort to any Government survey map and plat to understand that ground up there at this time, did you—you knew where all your work was, didn't you, at the time these men went up there? A. Where our claims were?

Q. Yes. A. Yes.

Q. And your claims represented on this exhibit "11," that is counting out those special locations that were made in 1910 it represents all these marked in pink on this map? A. Yes.

Q. Now, then, what is this long rectangular part of this map that runs from what you have marked on it—proposed 200-stamp mill—up touching the bed of the Alaska-Juneau property?

A. That was one of a number of schemes that were proposed as an outlet and is still considered as an ultimate outlet—that from that tunnel we can get more head at the Alaska-Juneau than by the other tunnel—by that I mean we can get more back of our ore bodies—it means ore above you.

Q. When did you take up that property in that end of the strike?

A. I think that was done about seven years ago—that must be nine years ago we originally started.

Q. Mr. Alfred Williams made the survey of these claims?

A. No; he did the patent survey of all except the Utah.

Q. I mean the patent survey.

(Testimony of R. A. Kinzie.)

A. Yes, sir, the patent survey.

Q. And you think you took up those claims about nine years ago.

A. I should say so—if not, it was about that time. [789]

Q. About that time?

A. I don't remember offhand.

Q. Did you take them up as mining claims?

A. Yes, sir.

Q. Is it not a fact as you stated a while ago that the principal object of taking up that property was to have a tunnel right up through there to tap your ore bodies in the upper Basin, in the Alaska-Juneau property, and bring it down on a gravity system to the shore here of Gastineau Channel to work the property?

A. That idea was originally proposed—there was a number of them proposed. There was two or three others and it was taken up and we had spent enough money on it and didn't wish to abandon it, and we went to patent with it, so as to protect that.

By the COURT.—It has been patented?

A. It has been patented.

Q. When did you abandon that scheme of opening up the property through that ground and by means of running a tunnel through it?

Objected to. Objection overruled. Defendant excepts.

A. I should say it was at least six or seven years ago—at least six years ago. The figures I am giving you are not exact figures, but they are within a year.

(Testimony of R. A. Kinzie.)

Q. You said you had some other schemes that were talked of in addition to the one of coming down Gold Creek which you are now claiming. What was the others?

A. None went very far. One was to put a sample mill up in the Basin and the one mill on the beach—there was a number of schemes. [790]

Q. Now, as a matter of fact, is not this true—until Mr. Bradley came up, about the time the Bent party came up here in the summer of 1910, you never had concluded up to that time but what you were going to stick to this old plan of operation by the triangular strip that runs up to the 200-stamp mill, up to your property? A. No, it was just the reverse.

Q. Is it not a fact that when Mr. Bradley arrived here in July or August of 1910, about the time the Bent party arrived here, you and he got together then and you concluded upon this plan of opening up by going up Gold Creek? A. Not at all, no.

Q. Now, I wish you would tell the Court what you had done looking towards opening up that property in the manner you are contending now you want to open it up, prior to the time that Mr. Bradley arrived here in 1910 and when the Bent people were on the ground?

A. We had extended our lower mill tunnel, that is the tunnel in the Basin—it is marked on that exhibit "11" as B—that had been extended over to what is known as the Jones fault—it is a branch from the Silver Bow fault, and that is a body of ore

(Testimony of R. A. Kinzie.)

that would show in what is known as the Wallace claim.

Q. This tunnel that commences at B on exhibit 11, how long is that tunnel? A. I think 1086 feet.

Q. That is approximately? A. Yes, sir.

Q. When did you complete it to that extent?

A. I think that was the year before last, the season before. [791]

Q. Now, then, another one of your tunnels is this one you have marked commencing near the word "Mill on exhibit 112, and runs in a southerly direction and then turns at another angle— Up to the summer of 1910 how much had you driven on that tunnel? A. That had been entirely driven.

Q. To what extent?

A. I think that is practically a thousand feet.

Q. Now, how much of it runs in a straight line before you turn this angle of, as you say, 45° —do you know how much is on either side of that angle?

A. I think there is about 380 or 400 feet. It comes to a point under our long dip and then turns and comes along under the ore body.

Q. Approximately, what point on this exhibit 11, if you put these tunnels on in their entirety, would they reach?

A. Well, you can get that by taking a scale.

Q. Take the scale—you are running between the letter "B"—and mark a "C" at the other end.

A. That would be the other end.

Q. And I wish you would mark the other approximately—mark that "X" and "Y," that last one—

(Testimony of R. A. Kinzie.)

“X” at one end and “Y” the other.

A. That is it approximately. (Witness marks it.)

Q. Now, what other underground work had you done on this property prior to, say, July, 1910?

A. The tunnel from the discovery pit—the drift from the discovery pit tunnel had been extended out to the fork under Quartz Gulch.

Q. That was a drift from which one of your tunnels?

A. It is not one of these tunnels—it is another tunnel.

Q. Can you indicate that approximately on the map? I don't care [792] for the exact location.

A. It is somewhere up here (indicating). The tunnel goes in, I think, 350 feet and then branches off and cuts over—they have got these tunnels altogether too far west—it branches over here.

Q. You have marked that with a lead pencil mark on the left-hand side of the line running through the figure “30”? A. Yes, sir.

Q. Any other underground work? A. Yes.

Q. Where was that?

A. The raises—there was a raise put up under the Nugget Gulch pit, that is the one known as our foot-wall, from the lower pit tunnel—two raises, one ninety feet and the other some hundred feet put up under the lower pit tunnel from a point just east of Quartz Gulch.

Q. Are those upraises you speak about in this last matter of underground work all connected with the other tunnels you have just testified concerning?

(Testimony of R. A. Kinzie.)

A. Yes.

Q. Is that the only underground work?

A. Other shoots, raises and pits and things of that sort.

Q. Any connection with these three tunnels?

A. There is another tunnel over in 'Quartz Gulch that has since been mined out and another tunnel called the Kennedy tunnel. We got the footwall further to the east—that was afterwards abandoned.

Q. These last tunnels, the underground work which you have referred to, would be to the northward on this map No. 11 of the words "G. M. Company"?

A. Yes, they would be northeast—almost north.
[793]

Q. They would not extend any lower down towards the shore of Gastineau Channel than the words "G. M. Company," would they?

A. No, they extend out to the fork—they didn't pass the fork except to poke in it and see what was in it.

Q. That is the only underground work you had on this property up to the year 1910? A. No.

Q. Some more yet?

A. We did quite a little work over on the Colorado—that was the starting of those original tunnels there and then there was quite a little trenching work done to locate the foot-wall. The ore body has been faulted down from the brow of the hill into the Basin; there is a long throw there and that fault was followed up and the position of the ore body deter-

(Testimony of R. A. Kinzie.)

mined there so that a tunnel coming in would strike the ore body, as known in the Ebner mine, which comes through the Humboldt property, comes over the top—would strike that first.

Q. I want to know just approximately the place and the kind of underground work you had.

A. In a general way, in addition to the other work that was done there, that was the extent of the underground work.

Q. The tunnels prior to 1910 that you had on the Oregon lode claim—what tunnel do you mean—do you mean this new tunnel that you began to drive? You didn't have any portion of that, did you?

A. Yes, there was tunnel started there.

Q. There was a tunnel started on the Colorado claim prior to the year 1910? A. Yes.

Q. Where was it started with reference to where you are driving [794] the tunnel now?

A. It was below that point.

Q. Was it done in the way of prospecting before patenting, on the Colorado claim?

A. No, that was the object of the Colorado claim, that was the general idea at the time those claims were located, to cover that portal, and the Colorado claim and Idaho claim went to patent for the reason that that portal was on them at that time.

Q. When did your company locate the Colorado and Idaho claims?

A. They are old locations—they were located before I came here.

Q. They are about as old a location as a lot of the

(Testimony of R. A. Kinzie.)

other locations up there of the Alaska-Juneau Company? A. No, they are much younger.

Q. Who did locate them?

A. Archie Nevins and I think J. P. Corbus.

Q. That was in '99? A. Yes, sir; it was.

Q. The tunnel you are driving now you commenced in 1910? A. Commenced in 1910, yes, sir.

Q. You commenced the tunnel you were driving on the Colorado, in 1910? A. Yes, sir.

Q. This work that you had been doing on the Alaska-Juneau Company's property prior to 1910, leaving out what was done on the Colorado and Idaho claims, but the work that is done there would have been as feasible a scheme for the opening up and mining of this property through a tunnel through this long strip that commences at the proposed 200-stamp mill and goes up and strikes the body of your claims? [795] A. No, it was not.

Q. The tunnels, etc., that you ran up there—wouldn't they serve your purpose just as well if you had run your tunnel up as I have indicated as it would if you ran the tunnel the other way?

A. No, it would not.

Q. You say, then, that the upper work that was done on the Alaska-Juneau property would not have been as beneficial to you in opening up and milling the ore on that property through a tunnel run up this long narrow strip from the proposed 200-stamp mill marked there, up to the body of the tunnel and would not serve your purpose as well if opened up in that way as it would to open it up under this plan that

(Testimony of R. A. Kinzie.)

you are now contemplating?

A. No, I didn't say that.

Q. What about it—would it or would it not?

A. Part of that question I can answer yes and part of it I can answer no.

Q. Wouldn't this work that you have done up here on these three tunnels you have described, that you did on the upper part of the property belonging to the Alaska-Juneau Company and which you have marked on this exhibit "11," be just as much assistance to you in milling and working this property by reason of the scheme you have to run up this long narrow strip commencing on your exhibit at the proposed 200-stamp mill and running up to your property as it would to work it through the other tunnel you are now contemplating to drive from the Colorado claim?

A. Granted we had the tunnel and the water it would, yes—it is self-evident from that map that it would not be anywhere near as economical. [796]

Q. One scheme would be as feasible as the other so far as getting the ore out of the property?

A. No, it would not.

Q. Didn't you say a while ago if you ran the tunnel up this long narrow strip to the proposed 200-stamp mill that would really be a better way to work the property, but would cost more, be somewhat more expensive, but you ultimately expected to work the property that way? A. I did not.

Q. Didn't you state a while ago that by running a tunnel up over this narrow strip of land you would

(Testimony of R. A. Kinzie.)

get more overhead?

A. I said the tunnel was started on the Summit claim at an elevation of 620 or 630 feet above sea level, and that scheme was abandoned long ago in favor of the shorter route.

Q. Did you state a while ago if you had run a tunnel on this scheme that you first had for opening up the property, up this long strip, commencing at the proposed 200-stamp mill and striking the body of your Alaska-Juneau Company property, that really you would strike more ore overhead or some term you used similar to that?

A. No, you are twisting that thing a little bit. If you would ask me about the original scheme I would say no; if you would ask me if a scheme such as that could be pursued I would say yes.

Q. The original scheme you had was to run a tunnel in some manner, but you did not indicate where you would commence the tunnel or anything about it?

A. The tunnel has been driven in a number of feet.

Q. You commenced the tunnel there, as I understand it, and drove it in a little ways and then concluded the tunnel was not being properly driven—drove it about 600 feet and then [797] concluded it was not as feasible a way to drive the tunnel to work the property as some other way to drive a tunnel to work the property?

A. No; there were very good reasons why it was abandoned.

Q. Then, I understand you to say there would be

(Testimony of R. A. Kinzie.)

a better plan—to drive the tunnel through this long strip to open up the property of the company, a better plan than the one you had undertaken over that same ground?

A. There is a better plan than our original scheme at that particular point?

Q. Yes. A. There is a better; yes.

Q. Now, then, these claims, the Idaho and the Colorado and the old Oregon claim, as located by Corbus were all located about the same time?

A. Yes, there is a group in there located the same time.

Q. By a man named Nevins?

A. Nevins located some of them.

Q. And the Wyoming claim, too, was that located about the same time? A. The same time.

Q. Were you in the company's employ at the time the Colorado and the Idaho placer were patented?

A. I was.

Q. 1904? A. I was.

Q. Do you know anything about the surveyor going up to survey these or did McDonald have control of that part of the business?

A. I know when he went.

Q. Was it your business to look after that or McDonald's?

A. Why, McDonald made the arrangement, I think, of going on to [798] the ground.

Q. You know as a matter of fact when you had that survey made for the Idaho placer and the Colorado placer that your company was having all the

(Testimony of R. A. Kinzie.)

ground surveyed in there that you made any claim to, don't you? Didn't you know that?

A. I knew the reverse. I knew that was not the case.

Q. You knew that was not the case?

A. Yes, sir.

Q. Why didn't you have the rest of the ground surveyed there if you attached so much importance to this location?

A. There was a number of reasons why I didn't do it.

Q. Now, then, when the Colorado lode claim was surveyed you found that there was a conflict of that with the Parish #1 lode claim—you were up there on the ground and found out about that yourself? You were up there on the ground before adjustment was made of that case? A. I was.

Q. The dealings were had between you and Mr. Ebner?

A. Mr. Ebner came to me and claimed that he had some ground there.

Q. And then the final consummation of the settlement was made otherwise than through you?

A. No, it was not; it was made through me.

Q. But you didn't sign the deed, the papers, concerning it?

A. I have no authority to do that.

Q. But you took a material part in the settling up of that matter—you were up over that ground pretty thoroughly at that time?

A. I was. I knew the ground very well.

(Testimony of R. A. Kinzie.)

Q. You say there were several good reasons why you didn't go ahead and patent the Oregon lode claim at that time. What [799] were those reasons?

Objected to as incompetent, irrelevant and immaterial and not cross-examination.

Objection overruled. Defendant allowed an exception.

A. The principal thing at that time—the idea was simply to patent the ground through which our tunnel and dams would be opened and also the ground we had which had just gone to patent with the rest of the tunnel site, that gave us a complete patent strip from the mouth and dump of our tunnel on Gold Creek right into the Basin.

Q. What tunnel did you have in Gold Creek at that time?

A. We had started and the surveys were made and the lines all brushed out for a main tunnel from a point just below where our main tunnel is at present.

Q. How much did you drive on it? How much had you driven?

A. I should say perhaps thirty or forty feet.

Q. You didn't attach, then, much importance to the remaining part of the property you thought you had up there then? A. Indeed, yes, I did.

Q. What was the reason you did not include it in this survey or patent?

A. We went to patent with the principal claims we had. We had a number of other claims we didn't

(Testimony of R. A. Kinzie.)

go to patent with—there was no immediate necessity to go to patent.

Q. You didn't know when the Colorado claim was patented anything about the Parish #2 claim?

A. We knew Ebner laid claim to some ground there—that was the Number 1. We knew nothing about the Parish #2.

Q. When you were up there examining the ground on the Parish #2 lode claim at the time this adjustment was made with Mr. Ebner, you didn't find any stakes there of the Parish #2 [800] lode claim, did you? A. No, I did not.

Q. Didn't find any at all? A. None at all.

Q. You knew Mr. Ebner was laying claim at that time, however, to the Parish #2 and Parish #1.

A. He came to me and told me so, and it made very little difference to us—all we wanted was the right of way for our tunnel through there.

Whereupon court adjourned until to-morrow morning at 10 o'clock.

June 3, 1911.

Continuation of the cross-examination of Mr. KINZIE.

(By Mr. WINN.)

Q. Since the Colorado claim was surveyed for patent in 1904, what work, if any, have you done on the Colorado claim, down say to the year 1910?

A. I think nothing has been done there except the survey lines that have been run, connecting that for a tunnel through there.

Q. In fact, there has been nothing done up there

(Testimony of R. A. Kinzie.)

except what you have just mentioned since these claims went to patent on any of the bunch of claims, the Idaho, Colorado or the Oregon lode claims, since 1905? A. Yes, sir.

Q. What did you do on the Oregon lode claim?

A. A detailed geological study has been made of all that ground.

By the COURT.—Is it patented ground?

A. Yes, sir. [801]

Q. You have not done any work that was underground work, or running any tunnels or any work of that kind on any of this property since 1905?

A. There has been no tunnels run at all until last year.

Q. What did you do on the Oregon claim, if anything, since 1905?

A. A detailed geological study was made of that entire country; the maps that were used in the geological study were made; a line of tunnel was brushed out and two surveys, I think, were made connecting the proposed portal of the tunnel with a point in the Basin.

Q. You have described approximately what has been done since 1905 without going into details?

A. Yes, sir.

Q. When was this survey of this proposed tunnel you speak of brushed out on the Oregon lode claim—you remember what year? A. No, I do not now.

Q. Approximately what year?

A. I think that was either three or four years ago that work was done.

(Testimony of R. A. Kinzie.)

Q. I call your attention to a map that is attached to your answer in 803-A, which answer has been offered in evidence in this case and is marked Plaintiff's Exhibit "CC," and ask you if you are acquainted with that map which is attached to your answer in that case? A. I am.

Q. That was made by some of your engineers?

A. It was.

Q. Now, Mr. Kinzie, for the sake of brevity in asking these questions, I am going to refer to the tunnel site of the claims that you have patented, commencing on this exhibit 11 of yours, near the proposed 200-stamp mill, that long triangular [802] connection that is made up of the continuous property up the hill—we will call that the Gastineau Tunnel site and we will refer to the one that goes up Gold Creek as the Gold Creek tunnel site and works. Now, on this map that is attached to the answer in 803-A in this case you have laid out your proposed tunnel through this Gastineau Channel tunnel site?

A. We have, yes, sir.

Q. It extends from Gastineau Channel on up to the bed of the Alaska-Juneau Company's property and after getting perhaps several hundred feet on the property, it turns at an angle of about how many degrees, approximately?

A. That would be about thirty degrees.

Q. And you proposed to run that tunnel up to tap these workings that you have testified concerning yesterday, those three tunnels, etc., that were run on the upper part of the defendant company's prop-

(Testimony of R. A. Kinzie.)

erty? A. That was proposed, yes, sir.

Q. The one that you have laid out from the Colorado claim which belongs to the Gold Creek system, you have virtually laid that out as paralleling a portion of the Gastineau Channel tunnel, have you not?

A. Yes, the north end.

Q. How much work did you ever do on any tunnel that was commenced on the Gastineau Channel tunnel site?

A. Why, sufficient work was done there to patent all except the Utah claim.

Q. On the tunnel that you commenced down near Gastineau Channel?

A. It was started at a point about 620 or 630 ft. vertically above the mean tide. [803]

Q. And run into the mountain there how far?

A. I have forgotten. It was sufficient, anyway, to patent those Summit claims.

Q. Can you remember approximately the distance in from the face of the tunnel?

A. I should say 100 or 150 or perhaps more feet—that is simply figuring from what work was necessary to patent. I don't remember now.

Q. Did you drive that tunnel in there for the purpose of patenting the claims or start it in there with the expectation of continuing it on in into the body of your property up above?

A. For both reasons. The principal reason for starting it at that time was to do the necessary work to patent those claims, with the exception of the Nevada claim which shows at the upper end and the

(Testimony of R. A. Kinzie.)

Utah at the lower end; they were not patented.

Q. That is the tunnel you undertook that you stated yesterday would hardly be a feasible and practical tunnel to continue on for the purpose of opening up and working the property?

A. It was not considered the best site.

Q. When did you do the last work on that tunnel?

A. That was done the year they were patented.

Q. Are you sure of that? A. Yes, sir.

Q. What year was that?

A. I don't remember—they went to patent just as soon as that work was finished.

Q. You mean the year the patent was granted?

A. That must be. The Utah was patented afterwards, I think. I should say four or five years ago.
[804]

Q. Of course, the patent would be the best evidence?

A. Yes, sir; it was, of course, some time before the patent was issued.

Q. Alfred Williams made the survey of these claims that run along the Gastineau Channel tunnel site and they were patented on the survey that he made?

A. The original survey was made by Tappen—Tappen & Brown—but I think the final survey for patent was made by Williams.

Q. You stated in your direct examination yesterday and probably on your cross-examination something about a five-stamp mill. I wish you would indicate on your exhibit No. 11 about where that five-

(Testimony of R. A. Kinzie.)

stamp mill was built.

A. The five-stamp mill was at a point marked "B," right below the mouth of the mill tunnel.

Q. That mill, I believe, you say was built after you came here?

A. Not in that position, no. It was up on the side line of the Aurora claim. It was moved down the hill, at a point below the mill, for the purpose of sampling that tunnel; that is an old mill.

Q. Does it stand there yet?

A. It is practically dismantled now.

Q. There is some part of the building there yet?

A. Yes.

Q. When was it you built the 30-stamp mill up there?

A. That was built before I came here. I don't know definitely the date.

Q. It was here when you came here?

A. It was here when I came here.

Q. That 30-stamp mill has been run each season since you have been here? [805] A. Yes, sir.

Q. For about how many months out of the year?

A. I would say it would average—my recollection is 5.2. I saw the average the other day.

Q. You have run it at its full capacity each year—30 stamps? A. No.

Q. Not the full capacity?

A. No; we have had parts of the mill on special work, on sorting work and stamp mill work, that is special sampling work; for instance, we would pick out a certain place that we would want to run a

(Testimony of R. A. Kinzie.)

couple of hundred tons and set aside five or ten tons and run that particular lot through separately.

Q. Are you a stockholder in the Alaska-Juneau Company? A. I am not.

Q. How long has Mr. Bradley been a stockholder in it?

Objected to as not cross-examination. Sustained.

Q. You stated yesterday that you and Mr. Bradley had planned this method of opening up and developing this property on what is called the Gold Creek system and Mr. Bradley was now president of the Alaska-Juneau Co. How long has he been president of it?

A. Ever since I have had any connection with it.

Q. And he has been one of the large stockholders, has he not, during that time?

Objected to. Objection overruled. Defendant excepts.

A. He had been a stockholder—I don't know how large a stockholder. He has not anywhere near the control.

Q. Do you want the Court to understand that ever since you have been here this thirty-stamp mill has been devoted [806] principally to sampling ores or have you been running that as a commercial plant?

A. Why, it has been used primarily as a sampling mill—that is all it was good for. It couldn't be used for anything else. It never has been a commercial proposition, that 30-stamp mill, since I have been here, never attempted to make it so.

(Testimony of R. A. Kinzie.)

Q. You know the Ebner mill on this side has only been a ten or fifteen stamp mill and that has been run as a commercial proposition?

A. I examined it five or six years ago—yes, I know what it was.

Q. Do you want the Court to understand that your annual reports do not show—that is, the Alaska-Juneau Company—that you have been running that mill up there for the last few years as a commercial proposition?

A. I distinctly say that that mill has been run at a loss.

Q. You have been running as a commercial proposition, have you not? A. No, we have not.

Q. Don't your annual reports so show?

A. They do not.

Q. You have been mining and milling ores from those tunnels you described yesterday through this mill, have you not? A. Some ore; yes.

Q. You spoke yesterday about one tunnel that you had up there that you worked all the ore out of through this mill.

A. No, if I did I made a mistake, because the lower tunnel is the principal tunnel. All we have ever taken from those tunnels, I think they have taken three slices off the side [807] for sampling purposes and that is all the ore that has come from our principal tunnels up there.

Q. How many tons per day will one of those stamps crush? A. About four and one-half tons per day.

Q. And four and one-half times thirty would be

(Testimony of R. A. Kinzie.)

the number of tons you would put through in a day?

A. If run continuously; yes.

Q. And you would run pretty near on an average of six months out of the year?

A. No, we have not. A crew has been up there about 5½ months each year.

Q. You commence each year, do you not—it will not vary only a few days—you commence the latter part of May and run June, July, August, September, October and sometimes into November?

A. I don't remember the mill starting in May. It might have. It usually starts along the first part of June.

Q. Did you start this year in May?

A. We have not started yet.

Q. You know the Perseverance started in May?

A. I understand they are dropping 30 or 35 stamps.

Q. You know that the Perseverance has started every year since it has run its stamp-mill between the 25th and the 30th of May?

A. I don't know that.

Q. You start yours about the first of June?

A. No, in the early part of June.

Q. You wouldn't testify positively that you haven't started in May some of the years?

A. No, I would not. [808]

Q. Now, passing over those ten or eleven years you have been there that that thirty-stamp mill has been running, you want the Court to understand that you were running that as a sampling proposition?

(Testimony of R. A. Kinzie.)

A. That is the principal object of operating that mill; yes.

Q. You say it has not been run at a profit?

A. It has not.

Q. Is it not a fact that it has not been operated at a profit simply because some of the stockholders want to get the stock at a low rate?

A. I never heard of it.

Q. You know that Mr. Bradley has lately come into control of that mine up there?

A. I know he has not.

Q. He has not recently made a purchase of a great lot of stock of that company?

A. No, sir; he has not.

Q. Has any of the stock changed hands recently?

A. I don't know.

Q. The books are not kept here?

A. The stock-books are not; no.

Q. Where are the two claims known as the Utah #2 and Utah #3?

A. They are two claims located to the west of our Utah claim.

Q. Where is that on this exhibit 11?

A. One of the claims would be about where that stamp-mill is shown there—that is the proposed 200-stamp mill; it includes the space where the words are written in there.

Q. And the Utah #2 and #3, do they join?

A. Yes, they join.

Q. Those were taken up last July or August?

(Testimony of R. A. Kinzie.)

A. They were, yes, sir; last year some time.

Q. Taken up in behalf of this company?

A. They were.

Q. Those claims overlap some other prior located claims down there, don't they?

A. I believe they do; yes.

Q. That is the property that belongs to Reck and Shattuck?

A. I have since learned that it did; yes, sir.

Q. Did you go on the ground when those two Utah claims were located down here along Gastineau Channel, where this proposed 200-stamp mill was located?

A. No, I did not—at the time they were located?

Q. Yes.

A. No, I think I was there two days afterwards.

Q. You directed some one to go over there and make those locations? A. I did.

Q. And you afterwards found that they did cover part of the ground that Shattuck & Reck have made application for patent for? A. I did.

Q. Going back to your opinion as to the depth of the slide on the Parish #2 lode claim at its southeasterly end, when did you say you first made an investigation as to that slide?

A. I don't believe I said.

Q. When did you?

A. I have known in a general way of the slide there for a long time. I went up there last Sunday to make sure, to look at it in detail.

Q. Who went with you? [810]

A. Mr. Whalen and Mr. Stewart.

(Testimony of R. A. Kinzie.)

Q. They examined it with you? A. Yes, sir

Q. There is considerable snow up there on the ground?

A. Practically none at all there except right in the pit, a little snow there.

Q. Practically none at all? A. Yes, sir.

Q. Did you go over, all over the lower end of the Parish lode claim? A. I did.

Q. And they went over with you?

A. No; I think they spent most of their time in surveying the pit. I wanted to see how deep it was and what the outline of it was. There are really three pits running in succession.

Q. How far from the southeasterly end line of the Parish lode claim did you go—down towards the creek? A. Went right to the creek.

Q. Then, did you examine over every bit of that claim, say from the claim up the hill to the southeasterly end line of the Parish lode #2?

A. Why, I went up and down there three or four times, I think, virtually to the creek. There are two slides there and I was trying to follow out where the junction was.

Q. Do you want to testify to the Court that in your opinion you think that slide is about a uniform depth of 80 feet over all parts of the Parish #2 that lies between the creek and the upper end line of the claim? A. No, I do not.

Q. What portion of that ground do you want the Court to understand that the slide is, in your judgment and opinion, about [811] 80 feet deep?

(Testimony of R. A. Kinzie.)

A. From 50 to 80 feet deep, I should say, in what is known as the main Borean pit. The end line of the claim passes through the Borean pit. To tie it down definitely, I should say, if you take the point where the line passes through the Borean pit—

Q. Do you want the Court to understand that it is your judgment and opinion that in sinking a hole or a shaft in the Borean pit that you have to go down between 50 and 80 feet before you strike bed-rock?

A. From the surface of the slide; yes, sir.

Q. I mean from the surface of the ground as you find it there now—I don't care whether you call it slide or not.

A. No; I think I would dig the distance at the Borean pit that has been taken out.

Q. How far has it been taken out?

A. I should say 20 to 25 feet in depth.

Q. Then, you say that you would have to go about how many feet, in your judgment, before you would find bedrock?

A. At that point, I should say we would have to go 25 or 40 to 50 feet more.

Q. That is based on your opinion formed from an examination you made on the ground there and not from any actual excavation?

A. No, I made no excavation.

Q. If it should appear from people who worked there that they did not have to go anything like that depth, you wouldn't want to put your opinion against the actual testimony?

(Testimony of R. A. Kinzie.)

A. I would like to know how he can show what he called bedrock—there is slabs there as large as this room.

Q. How many of those slabs have you discovered there? A. I have only seen one. [812]

Q. And where was that? A. In the Borean pit.

Q. In the pit? A. Yes, sir.

Q. Isn't there snow in the pit? A. No.

Q. There is no snow in it?

A. There is a little snow in the open cut there, but in the Borean pit the snow is out.

Q. Did you go down in it? A. I did.

Q. And you found what you call a kind of boulder?

A. Why, you could call it a boulder—it is a piece of rock that has come from the cliff above, from the main ore body above. It is an entirely different character from the bedrock in that country.

Q. That is in the bottom of the pit?

A. It is in the side of the pit and extends down into the bottom.

Q. Has there been any slide in the bottom lately from any indications? A. I think not.

Q. You think the bottom of that pit is in the same condition it was when most of the work was done there in cleaning it out? A. Yes, sir.

Q. That is your opinion?

A. That is my opinion.

Q. And you find it has some sort of formation on the bottom of the pit that you spoke of?

(Testimony of R. A. Kinzie.)

**A. No, I didn't find it in the bottom. It was on the northeast* [813]

Q. How far from the bottom?

A. It goes right down—goes down to the bottom of the pit.

Q. What did you find on the bottom of the pit?

A. Slide rock.

Q. That is your opinion—it is slide rock?

A. Yes, sir; it is a very positive opinion.

Q. Now, the slide there that you say you estimated the various depths that you have stated—there is nothing to tell as to when such a slide took place, is there? A. No, there is not.

Q. Nothing to tell at all? A. No.

Q. There is no indication of any length of slide that would make it such a depth as that?

A. I haven't seen any.

Q. You have no means of knowing the topographical condition of that part of the claim as it was before the slide, have you?

A. In a general way, yes; in a particular way, no.

Q. It would be an opinion of yours?

A. Yes, it would be an opinion.

Q. You don't know whether or not it was level and after the slide came down there, that it would make it a uniform depth all over, do you?

A. The slide is not uniform in depth; no.

Q. There may have been a lot of higher places there where the croppings of rock in place bearing metal were there before the slide came and then those

*Owing to defective carbon copy, omitted words do not appear in original Certified Transcript of Record.

(Testimony of R. A. Kinzie.)

bumps would be closer to the surface than the rest of the surface?

A. Not with the same character of rock that shows there. It is an entirely different rock. [814]

Q. If there had been any surface ground there that was much higher than the surrounding surface ground you would have no means of testifying concerning whether or not such was the case except as a mere opinion, would you?

A. As to the appearance of the rock—why I would be, I might say absolutely, positive.

Q. That is, you are testifying to your opinion, are you? A. Absolutely so; yes.

Q. That is an expert opinion?

A. Why, you can consider that just as you please.

Q. You have no means of knowing the topographical condition from the view of it with your eye, so you have to examine it as an expert and give your positive opinion to the Court that such was the case?

A. Do you mean as to the bedrock or the rock that shows in the pit at present?

Q. I mean whether or not you knew anything or could tell anything about the surface of that ground there before the slide took place?

A. Yes; I think I can tell very closely the surface of that ground before the slide came.

Q. That would be merely an opinion?

A. Yes, that would be merely an opinion. I haven't seen the bedrock.

Q. Do you want the Court to understand that it is your opinion that the surface of the ground there

(Testimony of R. A. Kinzie.)

was absolutely flat before the slide was made?

A. No, it wasn't absolutely flat—none of that country.

Q. And you don't want the Court to understand that you are testifying that that slide is anything like a uniform depth [815] over that entire amount of the surface of the ground of the Parish lode claim that lies between the creek and the upper end line?

A. No; it starts from a feather, comes to a deeper part and then gets thin again.

Q. How much of this big slab that you testified about as being in the Borean pit, on the side of it, is exposed?

A. Why, we have introduced a photograph that shows it very distinctly.

Q. You photographed it down in the pit?

A. Yes, we have three photographs.

Q. How much of this slab appears in the bottom of the Borean pit?

A. The actual bottom of the pit is slide.

Q. A recent slide? A. No, I should say not.

Q. You say it is such a slide as in your judgment occurred at the same time as the other slide you have been testifying about, that is the main slide?

A. Yes, there has been sloughing from the side, of course—as a whole, the slide there is of the same character.

Q. In this examination that you experts made up there last Sunday is this the only place that you found the ground bared—any of the upper surface?

(Testimony of R. A. Kinzie.)

A. No, there was one point that we were in doubt about.

Q. Where was that?

A. That is where the Borean pit passes through a ground sluice into a little open space there and that is one of the things that is making me so very positive about the bedrock, because if that is the bedrock, it confirms [816] absolutely the character of the rock above that point.

Q. Now, how far did you extend this examination—clear down to the creek?

A. Right down to the creek; yes, sir.

Q. Where did you find the thinnest part, in your judgment, of the slide?

A. As it comes to the creek it feathers off to nothing on that hogback that runs—it would be almost due east of our cabin.

Q. What, in your judgment, is the deepest part of that slide?

A. The deepest part of the slide I should say would be to the northeast of the Borean pit—no, it would be southeast. The Borean pit is a bite right out of one side of the slide—that is what you might call the southeasterly slide.

Q. You contend, do you, that so far as your judgment is concerned, there is no mineral-bearing rock, in place, at all between the creek and the upper end line of the Parish lode #2? A. No.

Q. You make no such contention as that?

A. No.

Q. Your canyon claim, as you claim it is located,

(Testimony of R. A. Kinzie.)

takes in a part of the Parish lode claim #2, does it?

A. I think the discovery is on the Parish—it is over the line that has been shown of the Lotta. We located it with the idea that it was above the Parish line.

Q. Have you ever read the location notice of the Canyon claim? A. Yes, I did, at the time.

Q. You know in your Canyon claim location notice you say you commence at your dam?

A. No, it is located just above the dam.

Q. Your location notice says your discovery and I think your [817] notice, too, is made several feet up, about 60 feet up Gold Creek from where your tunnel is placed in the creek, do you remember that? A. Yes.

Q. Then, if your dam is on the boundary line between the Parish #2 and Lotta your discovery on this claim is on the patented ground of the Lotta, is it not?

A. I haven't testified it is on the line—I don't think it is.

Q. I am putting you a hypothetical question: I say, if your dam is on the common side line of the Parish #2 and the Lotta claim, then your discovery for the Canyon claim is up on the patented ground of the Lotta?

A. If I assume your hypothesis, yes, it would be.

Q. You testified in one of those cases when an application was made for a temporary restraining order, did you not—you were put on the witness-stand?

A. I testified in a number of them; yes.

(Testimony of R. A. Kinzie.)

Q. I will ask you when you first discovered any of what we claim to be the corner posts, the witness posts or monuments on the lower side line of the Lotta claim?

A. Why, I think the first time I ever went right up to the post was last Sunday. I have seen the stakes and the brushed out line a number of times.

Q. Where did you see that? The one that you saw last Sunday, where did you see it?

A. It was on the hillside above Gold Creek.

Q. Near that cabin—is that the one? A. Yes.

Q. That is the one you have heard a lot of witnesses testify concerning in this case?

A. Yes, sir. [818]

Q. Is that the first time you knew what you take to be one of the lower side lines of the Lotta lode claim stakes?

A. No, there is a stake that was afterwards marked as a witness stake on the side of the road. I have known that stake for a long time.

Q. You testified in the application for a restraining order in 803 that you say that stake several years ago? A. Yes, sir.

Q. That is what we have contended is the corner post that shows the intersection of the Forrest with the lower side line of the Lotta?

A. Do you contend it is a corner post?

Q. I want to know what you contend it is.

A. I don't contend that it is anything but a post put into the ground; that is all I know about it.

By the COURT.—You are talking about the stake,

(Testimony of R. A. Kinzie.)

the one your people testified was at the point of intersection between the Forrest end line and the Lotta side line?

Judge WINN.—Yes, the intersection of the Forrest with the Lotta.

Q. I will ask you if you did not testify in 803—A as follows, when Mr. Burton was cross-examining you about this matter:

Q. Have you driven along the lines, exterior boundary lines of the Lotta lode? That word “driven” is a mistake—it should have been run.

A. I have run our own claim over and I have been over some of the other ones but very few.

Q. Have you ever noticed any of the stakes on the Lotta? A. On the Lotta?

Q. Yes. [819] A. No, I have not.

Q. You have not noticed any stakes?

A. I know of one stake along the side of the road; it was knocked out when we were moving some machinery about five years ago.

Q. It was knocked out when you were moving some machinery? A. Yes, sir.

Q. It was a Lotta stake?

A. Yes, I think it was—

You testified to that, did you, on the preliminary hearing?

A. I think I did. I remember part of it—part of it I am absolutely sure about.

Q. That you did testify to?

A. Yes. I am not sure that I testified it was a Lotta stake, though. I very likely did, though.

(Testimony of R. A. Kinzie.)

Q. As much as five years ago, then, you knew at least of one of the stakes there that was claimed as being one of the Lotta stakes?

A. No; I don't think at that time I knew it was claimed as a Lotta stake.

Q. Do you want to say that your testimony I have just read over to you is not true, that portion of it?

A. No.

Q. Didn't you say this was about five years ago you went along there and knocked that stake out and you were questioned and asked if you did not know it was a Lotta stake and you said you did?

A. Did I say it was a Lotta stake at that time?

Q. Did you know that it was a Lotta stake at that time?

A. No, I did not and don't know it yet. [820]

Q. I will ask you if this question was not asked you:

Q. Have you noticed any stakes on the Lotta lode?

A. On the Lotta?

Q. Yes. A. No, I have not.

Do you remember testifying to that in that application? A. I very likely did; yes.

Q. You have not noticed any stakes?

A. I know of one stake along the side of the road; it was knocked out when we were moving some machinery about five years ago.

Did you testify to that? A. I did.

Q. It was knocked out when you were moving some machinery? A. Yes, sir.

(Testimony of R. A. Kinzie.)

You testified to that?

A. I did.

Q. It was a Lotta stake?

A. Yes, I think it was.

You answered that way, did you not? A. I did.

Q. A corner stake?

A. I am not sure about that.

You answered that way? A. I did.

Q. Now, you want the Court to understand that you did not five years ago know that that was a Lotta stake—is that what you want the Court to understand?

By the COURT.—He has already said he did not know it was a Lotta stake.

Q. When did you ascertain that was a Lotta stake?

A. I never have known it was a Lotta stake and don't know yet.

Q. Although you testified substantially as I have read over to you on one of the preliminary hearings for an injunction in this case?

A. I did testify; yes. [821]

Q. Now, you stated that you were over this Parish lode claim and Parish #2 quite considerable at the time that this adjustment was made between the Ebner Gold Mining Company and your company over the conflict that existed between the Colorado survey and the Parish No. 1 lode, and I believe you said yesterday also that you knew at that time that Ebner was claiming the two Parish claims—when you were going over that ground for the purpose of set-

(Testimony of R. A. Kinzie.)

fling this matter, did you find any stakes of either the Lotta or Parish #2? A. I did not.

Q. You didn't look for any? A. No, I did not.

Q. You did look for the stakes of the Parish #1, did you not? A. I did not.

Q. You testified yesterday you had considerable dealings with Mr. Ebner concerning this adjustment and was at that time the assistant superintendent of the defendant company, were you not?

A. I didn't have considerable dealings with him at all. He came to me and said we were on the Parish claim. I knew nothing of the Parish claim at the time, never heard of it and I asked him what he wanted—I knew he must want something or he wouldn't come—and he said, "We have a claim across there and you are going upon it and if you go to patent we will adverse you," and I said, "We didn't want any adverse."

Q. What did he want?

A. He said he wanted the ground and I said, "We want the tunnel site; we want to drive a tunnel site there and if you will deed us the tunnel right there, it is all right with us, [822] that is all we want—a tunnel right there through that claim," and it was done.

Q. You did state yesterday before that was done you went over there and went over the ground?

A. I was on the ground.

Q. You don't want it understood you went over the ground?

A. Over the ground in conflict? No, sir, I did not

(Testimony of R. A. Kinzie.)

—that is up on the hillside.

Q. And you didn't discover any markings or monuments at all on the ground that would indicate to you that the Ebner Gold Mining Company had either the Parish #2 or the Parish #1 at that time?

A. I did not.

Q. You at that time were the assistant superintendent of the defendant company?

A. I have forgotten whether I was assistant superintendent or general superintendent at that time.

Q. Either one or the other?

A. Either one or the other; yes.

Q. Did they leave it up to you to adjust this matter with the Ebner Gold Mining Company or leave it up to Joseph McDonald?

A. No; I think that was done through me, that is, the preliminary work. Of course, it had to go down for the signature of the officers of the company—I had no authority to make any promise or deed any property belonging to the company away.

Q. But it had to be put through by the consent of the superintendent—your company would have never put it through if he had not consented to it?

A. Oh, yes.

Q. When this application for patent was pending, your company [823] agreed to convey to the Jualpa Company a portion of the Idaho placer and the Colorado lode, which covered the creek-bed of Gold Creek, did it not?

Objected to as incompetent, irrelevant and immaterial, and not proper cross-examination.

(Testimony of R. A. Kinzie.)

Objection overruled. Defendant allowed an exception.

A. There was some talk about it but it has never been deeded.

Q. You know there has been a contract entered into between the Jualpa Company and this defendant company to deed over that portion of it.

Same objection. Objection overruled. Defendant excepts.

A. I don't know there has been a contract; no.

Q. You are acquainted with Mr. F. W. Bradley's signature, the consulting engineer of your companies over there, and also the president of the Alaska-Juneau Company? A. Yes, sir.

Q. You know the seal of your company, the Alaska-Juneau Company? A. Yes, sir.

Q. I will ask you to look at that paper writing and state whether or not that is the signature of Mr. Bradley, signed as president of the company, the defendant company.

A. That is Mr. Bradley's signature.

Judge WINN.—Now, I offer in evidence this contract for the conveyance of certain portions of, I think, the Colorado and Idaho placer, which is indicated on this map, Plaintiff Exhibit "N" and is described by metes and bounds in the agreement—I desire to have it copied into the record.

By the COURT.—This would all be below any point of diversion of water that was ever contemplated or claimed to have been contemplated by this witness, would it not?

(Testimony of R. A. Kinzie.)

Judge WINN.—It is below the point where they are taking it out [824] now; yes.

By the COURT.—It is below the tunnel site—the Snowslide Gulch tunnel site?

Judge WINN.—It is right in that neighborhood.

Mr. SHACKLEFORD.—We object to the offer for the reason that it is incompetent, irrelevant and immaterial, not proper cross-examination and not within the scope of any of the pleadings in the case, and for the further reason that it appears upon the face of the contract that it is a contract between the defendant in this case and another company that is not a party to this case, and concerns a matter entirely collateral to any of the issues in the case.

Objection sustained and plaintiff allowed an exception.

Judge WINN.—We offer to prove by the introduction of this paper which the Court has just ruled out that on the 15th day of June, 1905, there was an agreement entered into between the Alaska-Juneau Gold Mining Company, the defendant in this case, and the Jualpa Company, a corporation, under and by virtue of the terms of which the defendant company agreed to convey to the Jualpa Company certain portions of the Colorado and Idaho placer claims that were in conflict with a mining claim that was claimed by the Jualpa Company at that time and which portions agreed to be conveyed are indicated on Plaintiff's Exhib. "N," and has the initials on, A. J. Co. to Jualpa Co. by deed, and is two almost triangular pieces that is heavily dotted in with ink

(Testimony of R. A. Kinzie.)

and has one of the end lines marked 5 on the Idaho placer claim and another marked 3 as two of the corner posts—one of the side lines of the portion agreed to be conveyed—and we offer that for the purpose of showing, among other things, [825] that this company never until recently contemplated using any water of Gold Creek, and it was only undertaken in connection with a plan that was commenced in 1910 while the Bent people were on the ground here.

Mr. HELLENTHAL.—I want the record also to show that the contract offered in evidence shows upon its face that it is a compromise agreement with reference to the matters and things therein set out.

Judge WINN.—It might show that there was a conflict between the Idaho placer and probably the Colorado with a claim claimed by the Jualpa Company, and there was either a suit brought or a threatened suit or an adverse filed and this was deeded over to us or agreed to be deeded and we let the Alaska-Juneau go to patent.

By the COURT.—It being conceded it was an adjustment and settlement of those conflicting claims, the offer will be rejected and exception allowed.

Q. From what part of the ground, commencing with the Colorado lode mining claim and coming down Gold Creek from this proposed flume and tram, which is a part of the system that you have testified concerning, which is referred to as the Gold Creek method of opening up this property and extending on down along Gastineau Channel as far as

(Testimony of R. A. Kinzie.)

you claim that your property runs, along the words, "Proposed 200-stamp mill," I will ask you to state to the Court over just what portions of that part I have described in the year 1910 there were locations made of mining claims by the defendant company.

A. There is a line of claims known as the Bear claims located from our Idaho claim to our Utah and Summit claims. [826]

Q. And the Utah and Summit claims are down here on some of this ground that you have the words written, "Proposed 200-stamp mill"?

A. The Utah claim is.

Q. Where is the Summit located?

A. The Summit adjoins the Utah.

Q. (By the COURT.) On the north?

A. On the north.

Q. When was the Summit located?

A. That is a patented claim.

Q. I am after those that were located in 1910?

A. I said they joined that.

Q. Do those claims of yours conflict with any other claims on that ground except the Shattuck and Rock and the Caro & Kohn claims, to your knowledge?

A. You mean the ground claimed by us?

Q. Yes. A. No.

Q. You don't know of any other conflict there except those? A. I know of no other.

Q. What was the first thing that was done on Gold Creek in the year 1910 in reference to making any of those locations that were made of water or of mining

(Testimony of R. A. Kinzie.)

claims, was the Mulligan location of water the first one?

A. No, I think not. I think those Bear claims were located first.

Q. I mean up on Gold Creek proper, back in the neighborhood of the Oregon—what you claim to be the Oregon?

A. The claims that have appeared in this case you mean? A. Yes.

A. Why, I think the Oregon was the first location made on Gold Creek. [827]

Q. Do you remember whether that was located before Mulligan put that first location notice up of water? A. It was.

Q. Does the Oregon location under Corbus and the one that was made in 1910 under Datson cover the same ground? A. Not identically; no.

Q. Now, in this answer in 835-A—I believe you verified that answer in this case we are trying now?

A. Yes, sir.

Q. Now, the description set out in there, in your answer, I will ask you to look at it and state whether that is the description of the Corbus Oregon claim or the Datson Oregon claim.

A. I can't say offhand.

Q. You don't know which one that describes?

A. No, I do not.

Q. If your answer is true—the answer sets out a description of those two Oregon claims as being the same, does it not? A. I don't know I am sure.

Q. You verified the answer? A. I did.

(Testimony of R. A. Kinzie.)

Q. Do you know when you verified the answer whether or not you were giving the same description of those claims?

A. I think that answer was checked over in the draughting office—I very seldom checked over the courses and distances—I sent it to the draughting office and they checked it over. I have no reason of knowing from reading it over what it is.

Q. Which one of these locations are you claiming the Oregon claim under, the Corbus location or under the Datson location.

[Clerk's Note: Owing to defective carbon copy, the last line on this page is illegible.]

[828]

Objection sustained. Plaintiff allowed an exception.

Q. Now, in this answer that I exhibited to you yesterday in 803-A, which has this map attached to it which you have been testifying concerning this morning, and when we were making an application for a temporary restraining order, you never claimed any title to the ground embraced in what you say is the exterior boundaries of the Oregon claim except the title you were claiming by virtue of the old Wyoming claim and the old Oregon claim?

A. I don't remember about that.

Q. In verifying these pleadings and in swearing to the truth of them you generally read them over carefully and compare these courses and distances or did you just sign them promiscuously?

A. No, I read them over and have the courses and distances checked.

(Testimony of R. A. Kinzie.)

Q. The first man you sent upon this property *that in dispute* and I have reference to the Parish lode claims, in 1910, was a man by the name of O. M. Harry, was it? A. No.

Q. What time did you send Harry up there?

A. Harry was sent up August first, if my recollection is correct.

Q. Would you be positive of that date?

A. Yes, I am quite positive of that date.

Q. What do you have to refresh your memory on that date?

A. I have looked that up and I have talked to Harry.

Q. The most you know about it is from what Harry has told you? A. No.

Q. Partly from what Harry told you?

A. A good deal from what was going on there, yes.
[829]

Q. Harry was the man you sent up there to build a cabin and to watch?

A. No, he didn't build the cabin.

Q. He went up when the lumber went up for the cabin?

A. No, he was up there before the lumber went up.

Q. He was there when the lumber went up?

A. Yes, sir.

Q. He helped get the lumber up?

A. No, I don't think he helped—we had some men there to build it.

Q. Was Harry on the ground? A. Yes, sir.

Q. What was he doing?

A. He was doing the work he was sent up there

(Testimony of R. A. Kinzie.)

to do; he was up there repairing that grade.

Q. Did he commence any work on the grade before you built the cabin? A. Yes, sir.

Q. Are you sure of that? A. Quite sure.

Q. Where did Harry stay then?

A. I think the first few days he stayed in town—the evening.

Q. The first man you sent up there in 1910 to do any work was Harry? A. Do any work?

Q. Yes—outside, of course, of the locations.

A. You mean on the ground in dispute?

Q. Yes, on the ground in dispute.

A. Yes. There was a good deal of work down around in that immediate vicinity. [830]

Q. The first work that was done up there on any of the disputed ground was done by Harry in 1910?

A. Right on Gold Creek; yes.

Q. Some of these things are not right on Gold Creek?

A. You know what I mean—in that immediate vicinity—say a line drawn from the Ebner compressor over to Snowslide Gulch; we had men working just above that.

Q. You were working on your own ground, not on disputed ground, before that?

A. I don't know whether it is disputed ground or not—I don't think it is.

Q. You say the ground along where you built your flume ultimately seemed precipitous and you first had to have trails, etc., built before you could get in over the ground or get lumber in there to build your

(Testimony of R. A. Kinzie.)

flume? A. Yes, there were two trails built.

Q. One of them you undertook as a trail which contemplated taking the water out of Gold Creek about 150 feet above your present dam?

A. No—the two trails that were built were leading from the cabin, one up the grade and one around the cliff over the top; that came around by the side of our present dam.

Q. *The* said the country was very rugged and precipitous there?

A. You couldn't get along the cliff, no. You had to go over the top of it.

Q. This man Harry was doing that work—building the two trails you have just mentioned?

A. He did build the two trails; yes, sir.

Q. Did he have any assistance in building the two trails? A. No, I think it took about a day. [831]

Q. Harry is a wooden-legged man?

A. He has one leg cut off.

Q. Has an artificial limb? A. Yes, sir.

Q. Do you know whether his artificial limb extends from below or above the knee, down?

A. I don't know.

Q. You know this man Harry, have seen him walk and know he gets around with a great deal of difficulty with that artificial limb and part of the time walks with a cane?

A. He gets around very well indeed for a lame man.

Q. But you know that he walks the same as all other men with artificial limbs, and part of the time has a cane?

(Testimony of R. A. Kinzie.)

A. He walks with a limp, yes—I never have seen him with a cane.

Q. Harry was the only man you had up there for quite a little while?

A. No, I didn't testify to that.

Q. Did you not say that you didn't have but one man up there for awhile—that was all that was necessary—didn't you testify to that yesterday?

A. You mean working on this particular grade?

Q. I mean the men up there in the canyon working on this particular grade. There was a considerable time that you didn't have any man except Harry? A. Yes.

Q. And he was living in the cabin? A. Yes, sir.

Q. And part of the time down town?

A. Yes, sir.

Q. That cabin is not built on the Parish No. 2 or No. 1 as we claim it? [832] A. No, sir.

Q. It is about how far below the lower side lines of either one of these claims?

A. I should say about 60 feet; perhaps 80 feet.

Q. And you know before you reach the Parish lode claim you have about 400 feet of flume to build, don't you?

A. No; all the flume is on the Parish claim until we get around from the tunnel to the intake; it is entirely on what is claimed to be the Parish claim.

Q. Look on this exhibit "N" at the part of the flume that is built before you reach the Parish lode claim and state whether or not if that map "N" is correct, if you haven't got about three or four hun-

(Testimony of R. A. Kinzie.)

dred feet on other ground than the Parish No. 2?

A. The temporary flume from our tunnel around?

Q. Yes; that is what I mean.

A. That is not on the Parish, not from our tunnel around to the Colorado claim, the intake of the pipeline.

Q. According to this map, taking the boundaries as being correct, about how much of your flume has been built before you reach the Parish #2?

A. It started on the Parish, on what you claim to be the Parish, or just above it—taking your map there—I think our intake shows just below the side line of the Lotta.

Q. Here is all this portion of the flume commencing at your penstock and extending around for a distance which Wettrick testified was about 400 feet before it reaches the lower side line of the Parish #2—if that map is correct, then there is quite a bit of your flume that is not on the Parish #2 lode claim? [833]

A. As it stands—this temporary flume from the tunnel around to the penstock we intend to build through that tunnel—the tunnel is not completed.

Q. I will ask you if this man Harry has not been in your service for quite a number of years?

A. Three—two or three years.

Q. When you had some contemplated lawsuits down at Sheep Creek you put him down there as watchman and guardsman, didn't you?

A. I don't know of any contemplated lawsuits we had there.

(Testimony of R. A. Kinzie.)

Q. You had him down there for quite awhile as watchman or something, working for your company?

A. He is an excellent man for work of this sort. He understands the measurement of water, he understands flume building.

Q. You had him down there?

A. He was at Sheep Creek.

Q. And when you had some dispute over here on the Island between John Johnson and the Treadwell Company you put him in a tent down there as watchman and let him have a rifle? A. We did not.

Q. He was put down there in a cabin to watch and keep the Johnsons off the property which Johnson claimed to be his? A. He was not.

Q. He was arrested for firing a rifle and charged with an assault with a deadly weapon and indicted by this Court for attempting to run the Johnson people off of there?

Mr. HELLENTHAL.—We object as incompetent, irrelevant and immaterial and not proper cross-examination and not the best evidence—especially as he was acquitted.

Judge WINN.—You admit that he was indicted, tried and acquitted for assault with a deadly weapon on these Johnson people. [834]

Mr. HELLENTHAL.—I admit nothing.

Q. You know as a matter of fact that he was arrested for firing a rifle and he claimed he fired over the head of those people and some of them came over here and had him arrested.

(Testimony of R. A. Kinzie.)

Objected to. Sustained. Plaintiff allowed an exception.

Q. You know the general reputation that that man O. M. Harry has in this community, and has had ever since he has been in your service, is that he is a gunman?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant excepts.

A. No, I didn't know that was his reputation. It is certainly not his reputation with me.

Q. Do you know how many times he has been arrested since he has been in your service?

A. Once, I think.

Q. He is the same man that when your company went further up Gold Creek in 1910 and pitched a tent across the right of way that we had cleared out—he occupied that tent and pitched it across there?

A. He was up on the claim we claimed as our Russell claim, yes.

Q. And you know that that tent was pitched right across a grade that the plaintiff company in this case had cleared away, don't you?

A. The tent was put up there, yes.

Q. You saw the tent up there several times?

A. I did; I was up there several times.

Q. I hand you a photograph which we will have marked for identification Plaintiff's Exhibit "DD" (it is so marked), and ask you if that is not a good photograph of the tent up there and a portion of the flume-line of the plaintiff company? [835]

(Testimony of R. A. Kinzie.)

Objected to. Sustained.

Q. After this cabin that Harry occupied down near Snowslide Gulch was built—not considering the men who assisted in building that cabin, but what other men besides Harry did you have working up there along about the first of August, if any?

A. There were no other men.

Q. When did you put on any other men up there to assist Harry? A. I think it was September tenth.

Q. Do you know how many men you put on there?

A. It was either two or three men—it was a contract started at the time.

Q. Two or three men on September tenth?

A. Yes.

Q. Who were they?

A. Hendrickson was one—the contract was let to Hendrickson.

Q. What was that contract?

A. Driving a tunnel.

Q. That was to drive a tunnel across that little piece of ground that runs under Snowslide Gulch?

A. Yes; he had the contract to drive that tunnel.

Q. He had the contract to drive that tunnel. Now, where did you commence that tunnel—on what claim do you claim you commenced it?

A. I understand it is on the Parish.

Q. And it is on what you claim to be—what claim, belonging to you? A. The Oregon.

Q. How many men did he have assisting him, do you know?

A. Yes, I think he started out with one or two—I

(Testimony of R. A. Kinzie.)

didn't pay [836] much attention to the men he had, but the crew was afterwards increased and the contract was turned over and Harry taken and put in charge.

Q. You don't know how long he worked with one or two men, do you? A. No, I can't say I do.

Q. When did you next increase your force of men?

A. Why, it was just a few days after that.

Q. Do you know how many more you put on then?

A. There were two or three men—I think the first day there were two and the next day there was one put on, the crew was changing back and forth.

Q. What time was that, in September?

A. That was around—I think this first man went up somewhere around September 12th.

Q. From September 12th on for some days, how many men did you have working up there?

A. Altogether I should say 6 or 7 men. Some were with Hendrickson and some were not.

Q. Working for what length of time?

A. The crew was afterwards increased after that, gradually increased—we put men all along the line then.

Q. How many men did you have working for you?

A. We had a crew there, counting natives and all, of about 50 or 60 men.

Q. Fifty or sixty men working on the flume?

A. On the flume grade and pipe-line.

Q. When did you first have that number of men there?

A. I don't know. There was quite a crew of men

(Testimony of R. A. Kinzie.)

there when I was in Ketchikan and when I came back, on that work. I remember one day definitely, that is, that I can verify, the day Judge Lyons was up there. [837]

Q. That is the time you went down to Ketchikan for the trial of Mackey and those men who had previously been arrested or indicted? A. Yes, sir.

Q. All of that work was first commenced down near Snowslide Gulch at a point on exhibit "N" near your penstock, near what we term the Penstock?

A. No, it was not.

Q. Where did you commence your first work?

A. It started on the slope of Gold Creek at the point marked Alaska-Juneau Company tunnel (referring to Exhibit "N")—no, that is a house—the tunnel is not shown here.

Q. You say a house, marked as your cabin?

A. Yes, sir.

Q. On exhibit "N," near the words Taku Queen lode claim—where the little cabin is. I will ask you with respect to that little cabin where did you commence your first work?

A. We started northeast from there, at the point where our tunnels are located.

Q. How far is your tunnel from the cabin?

A. I should say 225 or 250 feet.

Q. Up the creek or down the creek?

A. Up the creek; it is diagonally above the house; here is the house here and according to this scale it would be about 225 or 230 feet.

Q. Outside of this work that Harry did the first

(Testimony of R. A. Kinzie.)

work you virtually commenced doing was running that little tunnel you have spoken of? A. Yes, sir.

Q. Now, you commenced building your flume-line also from that [838] end down near Snowslide Gulch? A. No.

Q. You didn't build the first of your flume there?

A. No, the first flume was built on the grade just below our dam,—the intake right at our dam.

Q. You did commence clearing away what you claimed to be your right of way from your penstock and the cabin and commenced running that tunnel down at that end and then you did quite a little bit of work, didn't you, along your intended line of flume up Gold Creek, but you did no work up there at the place where your dam is now?

A. We did no work whatever around the penstock. We did not anticipate any interference at all. We started with our tunnel and intended to put our tunnel through; we first drove our tunnel, started the grade through there and in the meantime we had the place where our present dam is cleared out, our present diversion made and some boxes put in to sluice off the rock just above that point.

Q. I will ask you before the third or fourth of October, 1910, what amount of work had you done down near Snowslide Gulch and from your penstock on up towards Gold Creek, leaving out the question of any work that you had done or pretended you had done up around where your flume is now—where your dam is now, I mean?

A. We had done no work in Snowslide Gulch

(Testimony of R. A. Kinzie.)

whatever. The first work was at the tunnel, according to that exhibit about 230 or 235 feet from our cabin—the grade was continued in a northwesterly direction along Gold Creek.

Q. From the point you have just indicated—was continued along? A. It had been constructed.

Q. But it continued along up the creek from where you located [839] your tunnel?

A. No; the men were spotted along the grade and they worked in each direction from there—the men were working in the grade toward each other. The grade had been continued to the face of the cliff and part of that rock work started to get around the cliff on the other *wise*, that is, the present site of our dam. And just above it, above it,—I think for a distance of 150 or 155 or more feet, the bench of rock on the east side had been cleared off of gravel and boulders; that is on October 3d. The place where our present intake is had been cleared out with the exception of one boulder that blocked up the entrance—that was practically all the work—and the two tunnels driven; that was practically all the work that was done; and the lumber and logs had been delivered for the dam and the ground cleared just below the Jualpa flume, for that end of the dam—that is all the work up to October third.

Q. Now, prior to the 4th day of October, 1910, you had not constructed any of your flume-line at all, and when I say flume, I mean flume from your penstock up the creek, on your grade—had not put any of it in prior to October 4th?

(Testimony of R. A. Kinzie.)

A. We had put in one piece of flume as the intake, where we had made the diversion from Gold Creek at the dam—that was the only piece of flume put in.

Q. I say prior to October 4th then, as I understand it, you had not put in any flume at the commencement, at your penstock, what was afterwards made your penstock, extending on up Gold Creek?

A. Starting from that end?

Q. Yes. A. No.

Q. You hadn't put in any flume there at all?
[840]

Q. Did you have any grade from the penstock say on up about halfway, up the creek—did you have a grade ready for the flume on October 4th?

A. There was no grade constructed in a south-westerly direction from our tunnel, around that point.

Q. Then, as I understand now, from where your penstock is now, on up the creek for a considerable distance, on the 4th of October, you did not have your grade line ready to put down your flume?

A. No, you don't understand it at all—you didn't ask me that; going northeasterly from our tunnel the grade was practically completed.

Q. I mean up the creek, commencing at your penstock and going up the creek, over the line you eventually put the flume in had you prior to the 4th day of October any of that grade ready to put your flume down?

A. I can't answer that—the penstock is not on Gold Creek. You have to go down Snowslide Gulch

(Testimony of R. A. Kinzie.)

to the creek to get to the penstock.

Q. In and about where you put this little piece of tunnel that you said you started in there to carry your flume-line through Snowslide Gulch, right in that vicinity and on up the creek—did you have any grade ready for putting down your flume on October 4th?

A. Did I say I put a flume in Snowslide Gulch? I am trying to answer your questions as you ask them.

Q. From the point where you say you were going to put a tunnel through, to put your flume-line through that tunnel, on up Gold Creek, prior to the 4th day of October, did you have any portion of your flume line grade ready for putting down your flume? [841]

A. We had.

Q. Commencing from that point and going on up from your tunnel, how far up the creek did you have any part of your grade ready to put down your flume?

A. Why, I could tell you better from my photograph introduced here. I should say offhand—

Q. I mean approximately.

A. There were three places on the grade that were down to grade. The first place was right at the tunnel, I should say a distance there of between 70 and 80 feet, perhaps, and there was another place that had been cleared off, with the exception of some points of rock that came down. I should say that was 30 or 40 feet, perhaps, and from there on up to the cliff.

(Testimony of R. A. Kinzie.)

Q. About how far up the cliff from there?

A. From there I should say 100 feet or more,—a little more. The grade wasn't completed.

Q. I am taking this little tunnel that you spoke of, that you expected to put your flume through as an objective point—now from that point, going up the creek, and I mean in an unbroken line from that point up the creek and taking that as an objective point and coming down towards your penstock and taking that as a continuous line, how much of that grade did you have ready to put down your flume upon, on the third day of October, 1910?

A. I should say there was approximately one-third of the distance ready for the flume—going north from the tunnel, going around the point where the temporary flume has since been laid there was no grade laid.

Q. And how was the grade between the tunnel and where your [842] penstock is now?

A. I just said there was no grade there.

Q. I will ask you if this photograph that I present to you (marked Plaintiff's Exhibit "EE" for identification) is a fairly good photograph of a portion of your flume line extending from Snowslide Gulch on up Gold Creek for a distance and also showing on the right-hand side of Snowslide Gulch some buildings of yours—you notice the date at the bottom when that photograph was taken in regard to your answer—and ask you if that is a fair photograph.

A. Yes, I think it is. I notice it was taken the

(Testimony of R. A. Kinzie.)

20th of last month.

Q. What part of the grade over which that flume line is indicated on the photograph did you have ready to place your flume upon, prior to October third? A. None of it.

Q. You didn't have any part of that ready at all? A. No.

Q. Where is your tunnel with respect to the flume-line on them?

A. Directly over that point—over the point shown on the left-hand side of the picture, immediately above the flume-line—that is one portal—that is the north portal.

Q. That is the tunnel you commenced to run to put your flume-line through to carry your water in and along Snowslide Gulch? A. Yes, sir.

Judge WINN.—We offer the photograph in evidence as part of this cross-examination. It is admitted as "EE."

Q. Then, as I understand it, the grade that you had ready on the third day of October, a part of it was from the tunnel as [843] indicated on this photograph on up Gold Creek?

A. The tunnel does not show on that photograph.

Q. It is near the end of the picture?

A. It would not show on the picture.

Q. But it would not be very far from the end of the flume?

A. No, not very far; just on the other side of the ridge.

Q. Then from that point on up, on the third of

(Testimony of R. A. Kinzie.)

October, you had about how many feet ready for your flume? I mean along in a continuous line—I don't mean at different places.

A. From the penstock to the tunnel there was no flume grade constructed.

Q. I say from your tunnel up the creek.

A. I should say about one-third of the distance the grading was done.

Q. Ready for the flume?

A. Yes, ready for the flume; that is one-third of the work—the grade, of course, has been continued to the face of the cliff.

Q. I hand you another photograph marked Plaintiff's Exhibit "FF" and will ask you if that is a fair picture of your buildings that you have near Snowslide Gulch and another short portion of your flume-line, showing the relative location of them with regard to this gulch.

A. The photograph shows the flume-line as finally constructed on the north side, northwest side of Snowslide Gulch, the buildings at the portal of the tunnel being driven along under Snowslide Gulch and the grade on the northeasterly—I mean southeasterly—side of Snowslide Gulch and along the bank of Gold Creek.

Plaintiff's exhibit "FF" is admitted.

Q. I will hand you another photograph which shows part of a [844] flume-line and probably a water-wheel and some running water—it is marked "GG" for identification—and will ask you if that is a fair photograph of your flume, of the part of your

(Testimony of R. A. Kinzie.)

flume in and near Snowslide Gulch, before the snow had fallen and also if you identify that wheel there with any of your construction work.

A. I do.

Q. What is it?

A. That is a photograph taken between the 14th and 17th of November some time. The wheel shown in the foreground is the water-wheel of the compressor that was being installed.

Q. And where is your penstock with respect to any object on that photograph?

A. The penstock is not shown on there.

Q. Is there any point there that you could locate your penstock with respect to—how about where the water is flowing out of that flume?

A. The penstock is situated just back of that.

Q. And you pipe the water from that penstock down to your compressor-house and wheel?

A. We do.

It is admitted as Plaintiff's Exhibit "GG."

Q. I will hand you another photograph marked Plaintiff's Exhibit "HH" and ask you if that represents some part of your works up there and what part.

A. That shows the flume-line from the intake at the dam of the Alaska-Juneau Company along the bank of Gold Creek to the portal of the tunnel through the point.

The photograph "HH" is admitted in evidence.

Judge WINN.—The answer in 803-A has been admitted in evidence and I now offer the blue-print

(Testimony of R. A. Kinzie.)

attached to the answer. [845]

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

The blue-print is admitted as "II."

Afternoon Session.

Continuation of the cross-examination of Mr. KINZIE:

(By Judge WINN.)

Q. Up to the evening of the second of October, 1910, what had you done in and about where your dam was finally constructed?

A. Part of the lumber and the poles had been pulled down the hill to a point just above the Jualpa high line flume and previous to that time the piece of ground to the west end of the Alaska-Juneau dam where the flume was afterwards put in had been partially cleared off.

Q. Now, is that the condition you found this place in on the morning of the third of October, 1910, when you went up there? A. Yes.

Q. Where were your poles? Had they been taken down from the roadside, down toward the creek?

A. They had.

Q. When you got there on the third?

A. Yes, sir.

Q. Do you know when they had been pulled down, from your own personal knowledge?

A. No, I don't remember seeing them pulled down.

(Testimony of R. A. Kinzie.)

They were pulled down some time previous,—I don't know when.

Q. On the morning of the third when you got your lumber—when you got up there, where was your lumber—did you have some lumber up there? [846]

A. I think if there was any lumber it was either right alongside the road or had been pulled down the hill. I have forgotten which.

Q. I want to know what your recollection is on that, if you have any definite recollection on it.

A. My recollection would be that the lumber was piled just above—alongside the Basin road just above where the Perseverance tower is.

Q. Do you know when it was taken up there, of your own knowledge?

A. No, I did not see it. I know when part of it was sent over.

Q. On the morning of the third did you have a piece of flume already built and put in there where you expected to build your dam?

A. It was built on the morning of the third.

Q. How long a piece of flume did you build on the morning of the third?

A. That intake box was something like 12 or 15 feet long.

Q. You built it on the ground that morning?

A. Yes; the lumber had been taken down to the high line flume—the lumber set in the high line flume; the box constructed and taken along the side line to its position on the east side of Gold Creek.

Q. That was all done on the third?

(Testimony of R. A. Kinzie.)

A. On the third—the lumber must have been there.

Q. How far down was it from your dam, down the present grade of the flume that you had any grade ready to lay your flume on the morning of the third?

A. Well, the first spot that was grade was entirely finished I should say would be perhaps 300 feet, maybe a little less. [847]

Q. I understand you had Harry up there from some time about the first of August up to some other specific date, before you put anybody there to assist him. Now, leaving out the question of those men who assisted him in building the house or built the house or assisted Harry in getting the lumber to where the house was built—leaving those men out of the question, I wish you would fix the date specifically when it was you sent another man up there to help Harry.

A. I was on the ground with Hendrickson on September tenth.

Q. Hendrickson was the man that took the contract to build the tunnel you expected to put through there at Snowslide Gulch, to put your flume through?

A. Yes, the contract was afterwards signed up.

Q. Then you were up there on the 10th—that was the first work you had done outside of what Harry done? A. Yes, sir—that is, on the flume.

Q. He didn't do the work on the flume? I don't want to confine it to that.

A. On the flume or grade—that was the first time we put any additional men to work on the flume or grade.

(Testimony of R. A. Kinzie.)

Q. Outside of the service Harry performed?

A. Outside of the service Harry performed.

Q. On the 25th day of August, 1910, can you state specifically what had been done by Harry—do you know the condition of affairs up there on the 25th of August, 1910—up to about the 25th? I want to know what Harry had done up there.

A. Harry had moved up at that time and was living in the cabin which had been previously constructed. He had built a trail from the house, cutting steps in the side of the bank up to the grade line; he had also constructed a trail over the [848] hogback and over the cliff beyond to Gold Creek at a point where our dam was afterwards established; he had gone up the canyon of Gold Creek and had turned some water out of the creek, to be used for sluicing off the gravel on the east side of Gold Creek—had cleared off some of that gravel at one point for a distance, I should say, of 125 feet—we will say 100 feet—above the present intake of our flume.

Q. He had done considerable work for a lame man from the first of August up to the 25th?.

A. He had done a reasonable amount of work; yes.

Q. You remember the 25th of August was the date we filed our papers and commenced the first injunction proceedings against your company?

A. No, I don't remember it; it was somewhere in there.

Judge WINN.—We desire at this time to call the Court's attention to the filing of the complaint in the injunction suit in 803 on that date.

(Testimony of R. A. Kinzie.)

Mr. SHACKLEFORD.—We have no objection.

By the COURT.—It will be so considered.

Q. About how many times had you been up on these premises up to the morning of the third of October, 1910, that is, I mean after you first sent Harry up there—between the first of August and the third of October?

A. I suppose a dozen times—perhaps more, perhaps less.

Q. You had spent quite a little bit of your time up there, had you?

A. No, I had not. I would usually go up in the afternoon and catch the half-past four boat back.

Q. How often were you up there between the first of August and the 25th of August? [849]

A. Three or four times.

Q. You know that this cabin that was built up there in which Harry lived is on what we claim to be the Cape Horn lode claim, don't you?

A. I believe I have heard you so state; yes.

Mr. HELLENTHAL.—I move that be stricken—it has no relation to this case—that is the claim that has been dismissed.

Motion denied. Defendant allowed an exception.

Q. Do you know Mr. Burch? A. I do.

Q. Do you know what date in August or September or October Mr. Burch arrived here?

A. It was either September 25th or 26th—somewhere about there.

Q. Do you remember whether or not he was here when the application was made for the first injunc-

(Testimony of R. A. Kinzie.)

tion? A. I don't remember that he was.

Q. You don't remember whether he was or not?

A. Yes, I don't think he was here. I am pretty sure he was not here.

Q. Mr. Burch was sent up here by Mr. Bradley, was he not?

A. He was sent by Mr. Bradley for the allied companies—all of the interests in here.

Q. You heard Mr. Burch testify in court here at least on two occasions, on the trial of the criminal cases and also on some other cases, that he was sent up here especially by Mr. Bradley?

Objected to as hearsay. Objection sustained. Plaintiff allowed an exception.

Q. You said he was sent up here to represent the whole allied interests—you mean the interests of the Alaska-Juneau Company, [850] too, don't you?

A. Why, he was not sent up in connection with this case in any way whatever.

Q. Answer the question. You meant to represent the interests of the Alaska-Juneau Company?

A. All the interests that Mr. Bradley is representing in here—he came from Mr. Bradley's office.

Q. Why don't you answer the question whether he was sent here to represent the interests of the Alaska-Juneau Company—you can answer that?

A. Yes, sir, I can. You don't ask the question correctly.

Q. I ask you if the Alaska-Juneau Gold Mining Company belongs to the allied interests—do you understand that? A. Yes, sir.

(Testimony of R. A. Kinzie.)

Q. Did Mr. Burch come up here, among other things, to represent the interests of the Alaska-Juneau Gold Mining Company—to represent the Alaska-Juneau Company?

A. To represent the Alaska-Juneau Company he did come up, but it is not one of the allied interests.

Q. You know, as a matter of fact, that Mr. Burch is an expert who has been in the employ of Mr. Bradley for a good long time and is a man that is generally sent around where there are lawsuits to conduct, to look after the interests of the companies?

A. He is not in the employ of Mr. Bradley, to start with. He has had a great deal to do with lawsuits and it was to prevent lawsuits that he was sent up here—to look into the legal status and rights of the different companies.

Q. You got into them pretty fast after he came up here?

A. No, we didn't get into them—we were pushed in. [851]

Q. How long had Burch been here before you went up there on the third and got into this skirmish and you came down here and swore out complaints against Mackey and others?

A. But a very short time.

Q. You are the same Kinzie that swore out the warrants against Mackey and others, are you?

A. I am.

Q. You swore to the complaint? A. I did.

Q. Now, your company has commenced how many suits over this same property—do you know how

(Testimony of R. A. Kinzie.)

many suits are pending here in court?

A. No, I do not.

Q. You know your company commenced suit to clear title to what you call the Canyon lode claim?

A. Yes.

Q. You know you commenced a suit to clear the title to the Oregon, don't you, as located by Datson?

A. I think we did, yes.

Q. Then, you made an application for a restraining order to keep us from what you supposed we were doing in breaking down your flume, didn't you?

A. I think so.

Q. What time on the third day of October, 1910, did you swear to the complaint before Grover Winn, the original of which has been offered in evidence in this case, do you remember?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. Some time in the afternoon, I think it was.

Q. And the Mr. Burch's name that is mentioned in the papers in [852] this case is the same Burch you are speaking about? A. The same Mr. Burch.

Q. Then, you built this little piece of flume you spoke about up there near your dam on the day of the third—now, on the night of the third, you went up there and got what you call some kind of a diversion of water from Gold Creek, near where your dam is now, and into this little piece of flume?

A. We did get a diversion; yes.

(Testimony of R. A. Kinzie.)

Q. And that was on the night of the third of October?

A. Yes, that was the evening of October third.

Q. Now, then, you got a little diversion into that twelve or thirteen foot flume that you had there where your present dam is constructed—what was the length of that piece of flume you put in there?

A. Twelve or fourteen feet long.

Q. That is what I am speaking about—you turned some water out of Gold Creek into this 12 or 14 feet of flume and let it run out the other way down the creek?

A. We diverted it from its natural channel.

Q. You didn't have any flume on the other end to connect it up with? A. Not at that time.

Q. And didn't have any grade prepared for 300 feet down the creek?

A. We didn't have any grade down the creek; no.

Q. Why was it that you got in this hurry, to leave your grade line at least 300 feet down the grade and on this morning of the third to go up there and undertake to go in on this property where you now have your dam?

A. Well, as soon as we show any intention, we want the water [853] right—we have to make the diversion very quickly or other people will get ahead of us and hold us up afterwards; we have learned that by experience.

Q. You thought you were gaining some advantage by going up there and getting the diversion into this 12 or 14 foot flume?

(Testimony of R. A. Kinzie.)

A. No, we were showing due diligence.

Q. Altho you put it through that and let it run out of the other end, you call that due diligence, do you? A. I certainly do.

Q. You thought it was very material to the interests of your company in the fight over what you termed the water right that you get this dam in up there and to make some kind of a diversion of the creek? A. It certainly was material.

Q. And that is the reason that you had our men who were engaged in work up there and opposing you in getting this piece of flume in the creek, that was the reason you had them arrested?

A. No, it was not.

Q. Well, after you had arrested them, you had plain sailing and you went up in the night-time and put it in?

A. There was no rocks blasted down on us or rocks rolled down on us—there were some men up there later, I understand.

Q. This was the very identical work you were engaged in when you swore out the warrants against these parties?

A. Yes; we had been continuing that work for some time—that was part of the general scheme for diverting water.

Q. Part of the general scheme you have been talking about? A. Yes, sir, it was.

Q. Some time after they were arrested and bound over they were [854] indicted by the grand jury at Ketchikan and you were down there at Ketchikan

(Testimony of R. A. Kinzie.)

attending court for some weeks? A. I was.

Q. Who did you have up here when you were in Ketchikan—who, if anyone, did you have here to represent you—to report to you as to what our people were doing in regard to work up there on this property?

A. Why, I had no particular one report to me.

Q. You did get reports down there from two different individuals up here, didn't you?

A. Yes, I think two different people did telegraph to me what was going on.

Q. I will hand you this telegram and ask you if you got a telegram of that kind—you got a telegram like that? A. Yes, sir; something like that.

Q. Did you get one just exactly like that?

A. I think this is it—I wouldn't say, but I think it is.

Judge WINN.—We now offer this telegram and ask to have it copied into the record. (Admitted.)

Judge WINN.—I will read it: Juneau, Alaska, November 1, '10. R. A. Kinzie, Ketchikan: Reports just here are Ebner people have destroyed dam and flume in Basin; claim loads of rocks are being used to smash portion of flume already built by Treadwell. Appeal alleged to have been made to special deputy to arrest offenders—officer replied he had no right make arrest. Will get details later; McLean going to Basin with view of handling situation. (Signed) O'Brien.

Q. This O'Brien was the editor of the paper down here? A. I judge that it was; yes.

(Testimony of R. A. Kinzie.)

Q. You know it was, don't you, that sent you the telegram? [855]

A. I think so, yes—I have reason to believe it was.

Q. Now, I will ask you what steps you took after that to have those parties arrested when you were informed of this fact by Mr. O'Brien?

A. I have forgotten what was done. I must have answered the telegrams, but I don't remember how I answered them.

Q. You have an assistant superintendent up here at the Alaska-Juneau mines, don't you, and did have then?

A. There is an assistant superintendent on the ground, yes.

Q. What is his name? A. Up there?

Q. Yes. A. Jones was in charge of that work.

Q. Did you wire back to Jones to have those people arrested? A. I did not.

Q. Did you wire back to Kennedy, your assistant at Treadwell, to have warrants sworn out for them?

A. I don't remember, but I think not.

Q. Did you wire O'Brien?

A. No, I don't think I answered O'Brien's telegram at all.

Q. Did you take any steps at all toward having the people arrested in any way, manner, shape or form?

A. I don't remember of any steps—I think there was something done in Ketchikan. I know they were taken to the district attorney and shown to him, but I don't remember of any steps that were taken

(Testimony of R. A. Kinzie.)

to have them arrested. I am pretty sure there was not.

Q. By you? A. Yes.

Q. You didn't consider it of any importance at all to you?

A. That they were smashing up our flume? [856]

Q. Yes. A. Indeed, I did.

Q. But you didn't take any steps to have them arrested?

A. The men on the ground here could attend to that.

Q. Did you give Jones any instructions about it before you left here?

A. No, Kennedy had that in charge—that was left with Mr. Kennedy.

Q. You left the whole matter with Kennedy?

A. Yes, I left the whole matter with Kennedy.

Q. You know there were four or five of them arrested? A. I afterwards heard there was; yes.

Q. And discharged on demurrer to the complaint and were never arrested again?

A. I don't know how that came out.

Q. When did you first hear they were arrested?

A. I think I heard it while I was in Ketchikan, if I am not mistaken. I think Kennedy wired me something to that effect.

Q. After this second set were arrested you went on then and completed your entire flume line and connected it up with this little piece of flume you had down there at your dam?

A. No, the dam was not connected up—the water

(Testimony of R. A. Kinzie.)

was turned through the entire flume on November 14th.

Q. But you kept at work right along until you got up there—used diligence as you say?

A. We had been working right along, continuously.

Q. Now, prior to your attempt or your making of a diversion of water, as you term it, at your present dam, which is what we claim the boundary line between the Lotta and the Parish #2, I will ask you if you did not attempt, prior to that time, to make a diversion of water further up the creek? [857]

A. Why, I shouldn't call it a diversion in the sense that the other is a diversion; that water was turned out and the idea was to bring it down and sluice off the gravel on the bench.

Q. Is not this a fact, that prior to the day of the hearing of the application for a restraining order that we made in Case #803-A, which was the first action commenced, that prior to that hearing all your endeavors had been looking towards the diversion of water from where Mulligan posted his notice, which was about 150 feet further up the creek than where your dam is at present located?

A. Not at that point, no—it is below that point.

Q. About how much further up the creek from your dam was it you were seeking to make a diversion at the time the hearing was had upon the application for the first restraining order?

A. I should say it was about 50 or 60 feet.

Q. Can you point it out on Plaintiff's Exhibit "N," about what point?

(Testimony of R. A. Kinzie.)

A. If you have the photograph I could show you the exact point—I think you introduced it. I would say it was some point about here (referring to “N”)—it would show right in here.

Q. About where there is a round dot made on the right-hand bank of the creek as you go up from the common boundary line of the Lotta and the Parish #2 as shown upon Plaintiff’s Exhibit “N”—that is about right, is it not?

A. That is about right, yes.

Q. It was from that point that you commenced making your first grade—you expected to take the water out from that point? [858]

A. Yes, the first tunnel was put at that level.

Q. And how far did you run the first tunnel in down there when near Snowslide Gulch before you abandoned it and commenced the other tunnel?

A. That tunnel might have been in ten or twelve feet—I don’t remember the exact length. The total footage, if I remember, of both tunnels was about 331½.

Q. How came you after that hearing to change your grade and go further down the creek?

A. We saw we were getting into trouble there, we were being interfered with and we naturally wanted to stop any reason at all for a thing of that sort and we came down as low as we possibly could on that account; and for the further reason that if the flume was put on at the original point of diversion, that the flume would have to be set on top of slide rock and would have to be anchored. At the other point we

(Testimony of R. A. Kinzie.)

sank the flume down in what would have been the grade; in other words, we have a solid rock intake at the falls, while above it would have been a fanlike intake which would have to extend up the creek and especially subject to be taken out by high water in Gold Creek.

Q. Leaving out those reasons, isn't this the only reason why you moved down the creek? Is it not a fact that upon the preliminary hearing you became absolutely satisfied that you were on the Lotta patented claim and then you thought by moving down the creek and it maybe getting on an unpatented claim, that you would stand a better chance to get that water—wasn't that your reason? A. No.

Q. That is not your reason?

A. No, I knew where the Lotta claim was. We would have been [859] safe if we were on the unpatented claim, we would have been absolutely safe, but we have every reason to believe and I had at that time that our original point, even with the posting of the notice, was outside of the line of the Lotta as it actually is.

Q. I want you to answer me whether it was not that you had become absolutely convinced on that hearing that you were on the Lotta patented claim—wasn't that your reason? A. No.

Q. That had nothing in the world to do with it?

A. Oh, yes, of course, it had something to do with it—it had something.

Q. I believe you testified yesterday that the place you were taking the water now is the only practicable,

(Testimony of R. A. Kinzie.)

feasible, sensible place to take that water to bring it down to Gastineau Channel to there be applied to generating power to run the 200-stamp mill?

A. Did I go that strong?

Q. Will you put it that strong?

A. No, I won't put it that strong—it is the most practicable and by long odds the most economical point.

Q. Now, Mr. Kinzie, isn't this a fact—that you want to bring that water down here for the purpose of generating power and have it conveyed from Gastineau Channel to the Treadwell Company's mines?

A. No, I never heard of that before.

Q. You have at the present time in the Treadwell mines down the beach here at Sheep Creek a plant and are generating power there, applied to an electric machine, and are conveying that power around to Juneau across Gastineau Channel and over to the Treadwell mills? [860]

A. We have such a plant; yes.

Q. You have the wires in and the poles all up, have you not?

By the COURT.—That is as far as you need go in that.

Q. You are using the power to generate electricity for application over at the Treadwell mills?

A. We are using part of our power; yes.

Q. And you say you are not endeavoring to get this water to come down here to couple up with that power and carry it over to the Treadwell?

A. We are not, no, sir. The Treadwell has noth-

(Testimony of R. A. Kinzie.)

ing whatever to do with it.

Q. Now, you have another power to Gastineau Channel here that you are putting in up at Mendenhall Glacier?

A. You mean the Alaska-Juneau?

Q. No, I mean the Treadwell.

Objected to as immaterial. Objection sustained. Plaintiff allowed an exception.

Q. I will ask you this, if the Alaska-Juneau Company has not always been dominated and run by the Alaska-Treadwell people—is it not a subsidiary corporation of that corporation? A. It is not.

Q. The same stockholders? A. They are not.

Q. A large portion of them the same stockholders?

A. I don't think any of the stockholders in the Alaska-Juneau hold any stock in any of the properties on Douglas Island with the possible exception of Mr. Bradley.

Q. Never have? A. As far as I know. [861]

Q. Will you testify positively—you have the books of the Alaska-Juneau Company?

A. No; but I have seen the list of the people who own the stock and still have it.

Q. Haven't the superintendents of the people across the channel always been superintendents of the Alaska-Juneau? A. Not as I know of.

Q. Ever since you have been here that has been the case?

A. Since I have been here, yes; before that time, no.

Q. I will ask you which one is the parent corpora-

(Testimony of R. A. Kinzie.)

tion, the Alaska-Treadwell or the Mexican?

A. I don't know who is the parent of those corporations.

Q. You don't know which the ruling, the predominating, corporation is?

A. No, they are entirely separate, except as to management.

Q. You are also making preparations for your allied companies up here to take up the water of Salmon Creek, which is just above here, are you not?

Objected to as immaterial. Objection sustained.

Q. Now, I will ask you if you are not the general superintendent of these allied corporations, the Alaska-Juneau, the Alaska-Treadwell and the Mexican—is there any other corporation now in that bunch? A. The Alaska-Juneau is not in it.

Q. You are the superintendent, though, of all those corporations are you not—the corporations I have named? A. I am.

Q. When did Mr. Bradley become the predominating feature in the Alaska-Juneau Gold Mining Company?

A. I didn't know he was. He has been consulting engineer and [862] president of the company, so they naturally look up to him and consider his judgment on the mine, as most people do.

Q. Is it not a fact that your consulting engineers and all your officers, so far as Alaska transactions are concerned, are common officers of the Alaska-Juneau Gold Mining Company and these companies across the channel?

(Testimony of R. A. Kinzie.)

A. No, the Board of Directors are entirely separate.

Q. I mean the officers in Alaska.

A. No, with the exception of the man in charge on the ground, Jones—he is not connected with the Treadwell in any way.

Q. I will ask you if you, as an individual, have not been endeavoring, I will say, as superintendent of these various corporations, to acquire about all the water powers that are within any reasonable distance of the town of Juneau?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Defendant allowed an exception.

A. Why, if there is any water power in the vicinity of Juneau we thought we needed, we would certainly try to get it, either by purchase or otherwise.

Q. You have at present Sheep Creek, Gold Creek, Salmon Creek, Mendenhall Glacier Creek—any other creek?

Objected to as immaterial and not confined to the Alaska-Juneau Company. Objection sustained.

Judge WINN.—That is all.

Redirect Examination.

(By Mr. HELLENTHAL.)

Q. Has the Alaska-Juneau Company any water power or water rights or any source of electric supply other than the water right that has been taken up here, that you have testified to here in this case?

(Testimony of R. A. Kinzie.)

A. They have water rights in Silver Bow Basin for use at the mine.

Q. That is the one used in connection with the operation of the thirty-stamp mill and the five-stamp mill? A. Yes.

Q. Aside from that have you any other water rights or water supplies anywhere? A. No, sir.

Q. Have they any interest in Sheep Creek?

A. None whatever.

Q. Judge Winn has been inquiring of you in regard to some arrests made on the third of October of some men up on the Lotta claim, on complaint sworn to by you. When were you first interfered with in the conduct of your work by these men or by men up on the sidehill on the Lotta claim?

A. That was some days previous to October third.

Q. About how many days?

A. It was on the 26th or 28th.

Q. Had there been any interference previous to that? A. None that I know of.

Q. Had your men been working here previous to that? A. They had been working previous to that.

Q. And had not been interfered with? A. No.

Q. How long previous to that time had they been working there?

A. They had been working there for a couple of months.

Q. Tell me what occurred on or about the 26th day of September that led up to these arrests—on the 26th or 28th?

A. That was the time after Burch arrived. We

(Testimony of R. A. Kinzie.)

had gone up the Basin and were standing on the Jualpa high line flume looking at a map; Burch and myself were standing on the high line [864] flume about 100 feet, I should say, below Miller's Gulch, looking at a blue-print, when he glanced up the hill and asked me what those men were doing—there were two men standing there—and I said, "I don't know," and we started again looking over the map, and he said, "Those fellows are blasting over there; nobody said a word, called 'fire' or anything of the sort." We watched it a while and I said, "We had better get under cover," and we jumped behind the flume and the blast went off and scattered the rock all around us, and as soon as the blast was over we got up and I crossed Gold Creek just above, 50 or 60 feet above, a narrow point, above where our dam is and went up the hill, and I think the first man I saw there was Ed Seitz or Al Black, and I asked him who fired the blast and he pointed down the hill and said, "That young fellow there," who I afterwards found out was Middleton; and I went and asked him, I said, "What in the world are you blasting for without giving people warning?" And he said, "I did give warning," and I said, "You did no such thing. We were standing on the flume and you deliberately set off that blast without giving us any warning whatever," and just then Black came along and said, "He is just a kid; don't talk to him,—if you have any complaint to make or any talk to make, make it to me," and I said, I would make it to him and very promptly; and he said, "I have orders to do this—

(Testimony of R. A. Kinzie.)

if you have anything to talk over, better go and see Mackey," and I said "All right; where is Mackey?" and he said, "He is at the boarding-house," and I said, "All right; we will go and see him," and we went up there to the boarding-house, around the mill, and didn't find him there and went over to the grade on the other side of the creek and he was not there, and then [865] went down to the mill grade. He was just starting—they told us—he had gone down town and we followed down the road and caught up with him just outside the limits of Juneau. He was walking in company with Summers and Shattuck, and I started to tell him about this thing and tried to ask him if it was possible to arrange a schedule by means of which, if those men cared to continue working there, they could warn our men so they would not be injured if they desired to blast and we would do the same thing—I would furnish him a blasting schedule for our men and we would blast at fixed periods and he could do the same with his men and by that means no one would be hurt, and he refused to do it.

By the COURT.—Is it possible—you were standing near the falls—that you couldn't hear the warning the men tried to give you when they were blasting?

A. Yes, it would be possible—we were standing considerably below the falls.

Q. What did you do about this thing—when were you up there next?

A. The next time I went up there on the morning of October third.

(Testimony of R. A. Kinzie.)

Q. Tell the Court what occurred on that morning—in the meantime between this and October 3d had you used any efforts or endeavors to get these men to quit blasting in such a way as to injure your men below, except that you had seen Mackey?

A. No, I don't think anything further was done.

Q. Did you see Black that morning of October third?

A. Yes, I think I remember seeing him on the hillside.

Q. Did you have any conversation with him?
[866]

A. None whatever.

Q. Tell what occurred on the morning of the third of October.

A. The crew were working, blasting the rocks and brush, putting the boxes for the intake of the flume in position and some time after my arrival the crew of men came down from the direction of the Ebner mine over the old road and started to work, first rolling large boulders that they would detach and roll down the hill, in the endeavor, we thought, to keep our men from working there, and later on they would punch holes down with a bar and fill the hole with powder and blast it down and then pile piles of rocks, pile them up and put a stick of powder under it and blast it out in the air and it would drop down in the canyon immediately below where our men were working; and during the morning, the dam was fairly well completed, and we had the boxes twice broken by large boulders rolled down from the hill

(Testimony of R. A. Kinzie.)

above. In the meantime whenever they would call "fire," we would get out of the way, but they kept calling "fire" and wouldn't blast and after a while we waited until we saw the smoke of the fuse; and then they conceived the scheme of lighting a fuse and not putting powder on it. We finally got our dam in and the box over and they rolled down some rocks and smashed it up and we saw it was useless to continue under those circumstances—we were afraid if we did continue some of our men would be killed.

Q. Was anybody struck by a flying rock?

A. I know that I was and I know that Burch was.

Q. How many times were you hit?

A. I was hit a couple of times. When I was standing down in the creek it was impossible to see where the men were.

Q. Did you hear any warning of "fire," when the blasts were set [867] off?

A. No, I could hear no warning at all where I was, more on account of the roar of the water. Burch was over on the hillside on the Jualpa flume part of the time and he would beckon to us and part of the time he would not—we couldn't tell when they were blasting or not blasting.

Q. Do you know whether any warning was given at all times when they blasted or not—on that particular day?

A. No; two or three times I know particularly later on in the day, when it was not given—they simply blasted.

Q. Now, Mr. Kinzie, on the morning you speak of

(Testimony of R. A. Kinzie.)

were the men working when your men were not at work?

A. No; as soon as our men went back, they would stop working and sit down and pile up another pile of rock ready.

Q. I hand you here a picture, Defendant's Exhibit #16. Explain that to the Court.

Judge WINN.—We are going to object to this photograph—

(By Judge WINN.)

Q. I understood you to say in your direct examination in reference to this photograph that this shows a blast that was fired off up there by our people on the third?

A. No, on the morning of the fourth.

Q. That our people fired?

A. I think that Mr. Graham set that shot off—Al Graham.

Q. You charge him with the crime of having set off these blasts, etc.—you confined that to the third, did you not, in your complaint against him?

A. In the complaint, yes; the complaint was made out on the third—this is the morning afterwards.

Judge WINN.—I object to it. I understood him to say the other day that this is one of the blasts fired off on which these [868] men were arrested and I object to this and move to strike from the record in the case this exhibit.

Objection overruled. Motion denied. Plaintiff allowed an exception.

(Testimony of R. A. Kinzie.)

(By Mr. HELLENTHAL.)

Q. I show you here a picture marked Defendant's Exhibit No. 15 and ask you to look at it—do you see any mounds of rock piled up in that picture?

A. Yes, sir.

Q. I call your attention to this and ask you to indicate those mounds of rock to the Court and mark them with a pencil—put an "A" above them.

Same objection. Objection overruled. Plaintiff allowed an exception.

Q. Can you mark those mounds?

A. No; my marking does not show very plainly—one mound was just below where the two men are standing on the sidehill; the other can be seen on the left-hand side of the picture below where a stream of water runs down the hill and a large detached boulder is shown towards the upper right-hand corner of the picture.

Q. On what part of the picture are the mounds of rock shown?

A. Just above the center of the picture.

Q. Those are the mounds of rock you have been testifying about? A. They are.

Q. Now, during all this time, did any of these men come down on the grade where you were?

A. No, they did not.

Q. Did any of them come anywhere near the grade?

A. No, the closest man I saw was Hunsucker. He came down and set off a blast—it was the first blast fired that day. I should say that it was 60 or 80 feet

(Testimony of R. A. Kinzie.)

up the cliff—not a cliff [869] there; it is very precipitous, though.

Q. Your possession of the grade was not disturbed except by firing the shots?

A. No, it was not.

Q. Were these the same men that were arrested at this time and was this the same incident that led to the indictment and trial of Mackey and others and their conviction by a jury upon the indictment?

A. It was.

Q. This was the incident that led to it?

A. This is the incident; yes, sir.

Q. Now, about these arrests that occurred while you were in Ketchikan. You have testified, I think, that you did not direct the arrest of these men. What did you do in an endeavor to stop them—first, along about the first of October when these rocks were rolled down and the latter part of September when this disturbance was created up there, where was the United States Judge for this division?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. I think he was out of the district.

Q. How long had he been out of the district?

A. For some time. I don't know how long.

Q. How long was it before he got back?

A. I think it was along about at least the latter part of the month before he returned.

Q. Was there any Judge in the first division of

(Testimony of R. A. Kinzie.)

Alaska that could issue an injunction?

Objected to as calling for a conclusion.

Q. Was there any Judge within the first division of the District [870] of Alaska? Any District Judge?

A. No District Judge—none that I know of.

Q. What work were you doing that you were being interfered with on or about the first of October that led to these arrests with referenec to the work that you were doing at the time that the Ebner Company sought to enjoin you during the latter part of August and the first of September in Case 803-A?

A. It was the same work.

Q. That injunction, was it granted or refused?

A. It was refused.

Judge WINN.—We object to that. Objection sustained.

Q. Now, when you got to Ketchikan and got this telegram from O'Brien, what, if any, steps did you take to prevent the destruction of your property?

A. I don't remember the exact details. I answered Mr. Kennedy's telegram but I have forgotten the exact reading of the telegram.

Q. Did you take any steps toward getting an injunction?

A. Well, I must confess I have forgotten what action was taken in Ketchikan—whether it was an injunction asked for or what it was.

Q. Do you remember sending me a telegram?

A. I do.

Q. What was the purpose of that?

(Testimony of R. A. Kinzie.)

Objected to as a self-serving declaration.

Objection overruled. Plaintiff allowed an exception.

A. I remember the incident but I had forgotten for the time being whether it was an injunction we asked for or not—in fact I am not perfectly plain on that point yet. I know [871] you were sent for and came down there, but I have forgotten what form of relief was asked for.

Q. It was not any criminal relief anyhow?

A. No, it was not.

Q. To refresh your memory—do you remember my going to Ketchikan and getting a restraining order at Ketchikan and an order to show cause, which was afterwards heard before Judge Lyons up here in Juneau, being Cause #823-A, in which an injunction *pendente lite* was afterwards issued and the restraining order was made permanent during the pendency of the action?

Objected to as not the best evidence. Objection sustained.

Q. I now again call your attention to a photograph marked Exhibit 12 and ask you to look at it. I understand that was taken on the 4th of October?

A. It was—early in the morning of October 4th.

Q. You testified to Judge Winn that about 300 feet of flume grade had been completed at that time?

A. Yes, sir.

Q. When you said completed—what did you mean by that? A. Ready to receive the flume.

Q. Had work been done on the balance of the flume

(Testimony of R. A. Kinzie.)

grade? A. It had.

Q. As indicated on that picture? A. It had.

Q. Does that show a picture of the flume grade correctly on that morning?

A. It shows the flume grade from the mouth of the tunnel to the edge of the cliff.

Q. And what portion of that work as indicated on that picture was completed? [872]

A. A strip from the tunnel up to where it shows a small slide in this picture and further on there is another strip 30 or 40 feet long.

Q. The balance had not yet been completed?

A. No, the balance had not yet been completed.

Q. What work had been done at that time or prior to that time beyond the cliff?

A. At that time the dam had been completed, the intake built and the rock work started.

Q. How is that?

A. The dam had been built, the grade had been built to the tunnel, part of the tunnel driven and two crews working both ways on the cliff.

Q. The cliff was all rock work?

A. The cliff was all rock work; yes.

Q. That had not yet been completed at that time?

A. No, it had not.

Q. What was the reason you had not done the rock work before that?

Objected to. Objection overruled. Plaintiff allowed an exception.

A. The cliff was of such a nature, you would have to work from both ends and not more than two men

(Testimony of R. A. Kinzie.)

could work in the face; they had to be hung out on staging and carry the work along and holes had to be driven above to blast off and a trench built below and it was very slow and tedious work.

Q. They required bridges from both ends?

A. Yes, sir.

Q. What was the cost of the work done by you after the first of August in connection with the construction of this grade [873] and building the flume and diversion of water?

A. The cost of the work on the flume at Gold Creek?

Q. I am asking how much money was expended by you in connection with the diversion and appropriation of this water?

A. We spent something over \$15,000.

Q. Do you know where the Basin road is?

A. Yes, sir.

Q. In passing up and down the Basin road is this flume grade of yours in plain sight?

A. Yes, sir; at times.

Q. For the entire distance from the dam to the tunnel?

A. It is, after you come to a point called Cape Horn on the road.

Q. Did anyone speak to you about this matter before Mr. Bent spoke to you about it?

A. They did not.

Q. Now, the flume built from the tunnel to the compressor that was built afterwards, after the fourth of October? A. It was.

(Testimony of R. A. Kinzie.)

Q. When was the water actually applied by you to the beneficial use of driving the compressor?

A. It was applied on the morning of November 17th.

Q. And has been used ever since?

A. Continuously.

Q. You testified to me yesterday about a tower that was on that ground. What kind of a tower is it—what is it used for?

A. They proposed to carry transmission wires up—the wires have never been put up.

Q. There is a line of towers running along the hillside?

A. Yes; some on our property and some below.
[874]

Q. Now, Mr. Kinzie, about that line of claims known as your Summit claims, extending from Silver Bow Basin to the beach to Gastineau Channel, and indicated on the map—exhibit 11—the map that shows your entire property, that tunnel that Judge Winn has been examining you about, did the driving or using of that tunnel, did that in any wise interfere with the other plan of operation or was that a subsidiary plan, or how was that? Explain that to the Court.

A. Why, that line through there, the main object of having it patented and holding it is in case at some future time—if the project is successful and the ground above the line of the tunnel driven through Snowslide Gulch is worked out, we could obtain additional back by driving a tunnel through

(Testimony of R. A. Kinzie.)

this patented strip of ground from sea level and work out the additional backs in the mine without the necessity of sinking shafts.

Q. There is no way of getting the water down to the mill that way? A. No, there is not.

Q. And how would that be used in connection with the other plan—would the use of one mean the abandonment of the other?

A. No, not at all; it is subsidiary to the other.

Q. I want to ask you one question about that Borean Pit. You stated that your answer with reference to the condition of that rock on the southerly end of the Parish claim was based upon your opinion? A. Yes, sir.

Q. I want you to explain to the Court the conditions that you found there, the character of the rock and other matters [875] and things upon which your opinion is based.

A. The country southeast of Gold Creek, from Miller's Gulch to Snowslide Gulch, which would define the ends and Gold Creek at the bottom, from there to a point, I should say, three or four hundred feet vertically higher on the hillside, is covered by two slides, the most easterly slide, southeasterly slide, coming from a point just inside the opening of Snowslide Gulch; the northerly slide coming from a point just above the beginning of Miller's Gulch, to the right as you look up the Gulch; the bedrock as shown in Miller's Gulch for the entire cross-section of Gold Creek, and on the other end and where it is exposed in Snowslide Gulch, is of identical char-

(Testimony of R. A. Kinzie.)

acter and differing entirely from the material as exposed in the Borean Pit.

Q. What is the character of the rock exposed in Snowslide Gulch?

A. It is a schistose material, colored green.

Q. Explain whether it has a well-defined strike.

A. Yes, it has a very well-defined strike. The material of the ore body from the footwall which shows in the mountain just above is a diorite or a changeable diorite. It is also known as a *metagabriel*. That is entirely distinct and separate from the bedrock as exposed on the other sides, as I have just briefly described, and for this reason, as soon as you see any piece of rock you can determine immediately if it belongs to the bedrock in position or has come from some outside source.

Q. Now, what is the condition of the rock in the Borean Pit—what does it compare with?

A. It is of identical character with the rock that forms the main ore body of the Taku mine or the Ebner mine. [876]

Q. How far is that distant, that main ore body, from the Borean Pit?

A. I should say horizontally about five or six hundred feet.

Q. Above it on the hillside?

A. Yes, sir, considerably above it.

Q. What is the stratification and strike of the boulders that appear in the Borean Pit?

A. They have no distinct stratification—it is a dioritic rock.

(Testimony of R. A. Kinzie.)

Q. Are there any quartz seams in it?

A. Yes, the rock is cut by quartz seams and the principal quartz seams shown in the Borean Pit in that large piece of rock there would be at practically 90° to the strike and pitch and dip of the stringers as shown in the schist that form the bedrock at this point.

Q. How did the quartz seams run in that locality,—with or against the strike?

A. The quartz seams in the bedrock conform with the schistosity of the material.

Q. How do the quartz seams as they appear in this boulder or rock at the Borean pit, how do they run with reference to the strike of the country?

A. To the strike—the seams in that bedrock there?

Q. Yes.

A. It would be about 90°—it is very flat.

Q. Do you recall the time that answer was prepared in 803—that is the first injunction suit—when the Ebner Company first brought the suit?

A. Yes, sir—the first one? Yes.

Q. Do you remember how much time we had to prepare that answer?

A. As I remember the thing, we had a very short time. [877]

Q. Do you remember what we did in connection with the preparation of that answer, what we did in the way of ordering certified copies from the commissioner?

A. I remember there was a good deal of scurrying around trying to get certified copies of various pa-

(Testimony of R. A. Kinzie.)

pers such as location notices, transfers, etc.

Q. What did we get in the way of certified copies of the Oregon?

A. We got, as I remember, a certified copy of one of the Oregons—I think it was the first Oregon—and in place of sending us a certified copy of the proper Oregon claim they sent us a copy of the Oregon claim that is in the vicinity of the—the commissioner sent the wrong copy.

Q. Do you remember why that second Oregon was not set up in that answer at that time?

Objected to as incompetent, irrelevant and immaterial.

Q. Do you remember what I told you about it?

A. As I remember it, there was no time after that to get it—I remember that was the reason.

Q. What did I tell you about it?

A. No, I don't remember.

Q. That work that shows on that exhibit 15, that picture, that grade line there—that was done prior to October third?

A. Prior to October third; yes, sir.

(By Judge WINN.)

Q. You know that summons was served on you in 803-A on the 26th day of August, wasn't it?

A. The first suit?

Q. Yes.

A. No, I don't remember the date. [878]

(The summons and return admitted in evidence.)

Q. If it was served upon you on the 26th of August, 1910, and you didn't file your answer until

(Testimony of R. A. Kinzie.)

September first, 1910, you had about five or six days to get up this data you were furnishing Mr. Hellen-thal, did you not?

A. We had no idea any suit would be brought on that ground and I know personally I had to ransack around and get all the papers I could as quickly as possible.

Q. You as superintendent was more or less about the property but you didn't even know what mining claims you had in Silver Bow Basin?

A. I think I knew the claims.

Q. The fact is you had forgotten about the Oregon location made by Corbus until the suit was over?

A. No, sir, I had not.

Q. You never had done any assessment work on it? A. Yes, sir.

Q. Not until 1905—you hadn't done anything in the world on that claim, had you?

Objected to.

Q. You not being satisfied with the old Oregon location you had a new Oregon location made over almost identically the same ground the old Oregon was made over?

A. The second Oregon was made over almost the same ground, yes.

Q. And not satisfied with those two locations you had another Canyon location made which covered a good portion of the ground of both the Oregon claims?

A. No, sir, it covers entirely different ground. I don't think it covers the same ground.

(Testimony of R. A. Kinzie.)

Q. Do you know anything about it? [879]

A. I absolutely know.

Q. When you take that location of the Canyon claim which is up the creek about 60 feet from your dam and has a parallel line along there as the lode line of your discovery and then you take 300 feet on either side, don't you take a good portion of your Oregon claims?

A. We take a portion of them; yes.

Q. Now, in that very identical answer you state that you have done the assessment work—you say that the annual assessment work for each year since the year 1899 has been performed on both of said claims by the said Alaska-Juneau Gold Mining Company. Now, then, could you by any possibility have thought that when you were signing that answer, you were including in there the Datson location which was only made in 1910?

Objected to as argumentative; objection sustained. Plaintiff allowed an exception.

Q. Then, you do know as a matter of fact that when you signed that answer you had nothing else in the world in there except the old Wyoming claim and the old location of Corbus to base your defense on in that suit? A. I think it was sufficient.

Q. Now, I call your attention to an affidavit that you signed and filed in 803-A and ask you if that is your signature in that affidavit? A. Yes, sir.

Judge WINN.—We offer this affidavit in evidence as a part of the recross-examination.

It is admitted as Plaintiff's Exhibit "JJ," copy

⁴ (Testimony of R. A. Kinzie.)

attached hereto and made a part hereof.

Q. On this exhibit 12 the work indicated on there near the [880] tunnel shown on the property, how far away is that from your dam in the creek? I mean by that how much flume-line does it take to reach from that point up to your dam, from where the grade is there.

A. From the end of the grade?

Q. Take it from the tunnel.

A. From the tunnel I should say about 800 feet.

Q. Eight hundred feet of flume? A. Yes, sir.

Q. It would be a shorter distance in a straight line?

A. It would be a shorter distance in a straight line.

Q. This is the work you had done on the 4th day of October in regard to grades?

A. No, that is not all of it; there was some work done up at the other end.

Q. Now, a great lot of these pictures you took on the morning of the 4th of October—the trial of these criminal cases down here was put off until you got these pictures—you got them the morning of the fourth after the people were arrested?

A. I don't know whether it was put off or not. I know we got them on the morning of the fourth.

Q. You know you were a witness in these cases and they didn't come off on the fourth?

A. They didn't come off while I was up there.

Q. And you went over night and put in that piece of flume and put up some of the dams and then went

(Testimony of R. A. Kinzie.)

up there the next morning and took the majority of these pictures?

Question withdrawn.

Q. You talked about not hearing the cry of "fire" when the [881] blasts were fired by our people. You know that Burch was put over on that high line flume of the Jualpa Company so he could watch and hear the alarm of fire when sounded by our people, and he was put there for the purpose of communicating it to you people so you could get out of there?

A. Yes, he was put there to watch them.

Q. You know that Burch testified in your presence in the trial of that criminal case that every time a blast was fired by our people warning was given?

A. No, he did not.

Objected to as hearsay. Objection sustained.

Q. Now, you thought the matter of the diversion of that water was so important to be made that you risked your life and risked the lives of your employees according to your testimony to get in there and take it, did you?

Objected to as argumentative. Objection sustained.

Plaintiff allowed an exception.

Q. You are willing to be pounded up by the rocks to get in there to get a diversion of that water?

Objected to. Objection sustained. Plaintiff allowed an objection.

Q. Have you been using that water all the winter or has it been frozen up most of the time?

A. Been using it all the winter.

(Testimony of R. A. Kinzie.)

Q. All the time? A. All the time.

Q. To run your air-compressor?

A. To run our air-compressor; yes.

Q. It has not been frozen up with that water running along Snowslide Gulch?

A. They might have lost one or two days by anchor ice or something. [882]

Q. You have been up there how many times this winter?

A. I didn't go up many times this winter. I suppose two or three times.

Q. How many men have been working up there this winter?

A. Four men, I think, in the tunnel and one sharpening steel—sometimes I think only three men.

Q. You have been mucking out with a wheelbarrow? A. Yes, sir.

Q. Have you extended that tunnel into the mountain-side there further than the place where you are turning to the left? After you get in there, to furnish a tunnel to put your flume line through—have you run it beyond that point?

A. The main tunnel—the branch we are driving now is the flume tunnel—we have branched off from the main tunnel to drive the flume tunnel.

Q. How far have you driven the main tunnel in where you branch off to drive this tunnel through for your flume? A. I think that is 60 or 80 feet.

Q. Have you been in there measuring it, lately?

A. I was in there last Sunday.

Q. Did you measure it?

(Testimony of R. A. Kinzie.)

A. No, sir, I did not—I never personally measured it.

Q. Two or three men in there have been mucking out all winter with a wheelbarrow?

A. And done very excellent work; yes.

Witness excused. [883]

[Testimony of B. D. Stuart, for Defendant.]

B. D. STUART, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your name? A. D. B. Stuart.

Q. Where do you reside?

A. Missoula, Montana.

Q. What is your business, trade or profession?

A. Surveyor and mining engineer.

Q. What school are you from?

A. University of Montana.

Q. When did you graduate from there?

A. In 1902.

Q. What, if any, other school did you attend subsequently?

A. I never attended any school subsequently.

Q. What did you do after you left the University of Montana?

A. I was with the United States Geological Survey for about seven years and the Reclamation Service.

Q. What did you do after that?

A. I was engaged in mining and surveying and

(Testimony of B. D. Stuart.)

mining engineering in the Coeur d'Alene district of Idaho.

Q. Who did you work for?

A. The Federal Mining & Smelting Company.

Q. How long?

A. It was in the neighborhood of four years.

Q. How long has it been since you quit the Federal Mining Company?

A. Within the past year—just about a year ago.

Q. What are you now doing?

A. Private practice.

Q. Do you know the Alaska-Juneau Gold Mining Company? A. I do. [884]

Q. Do you know Mr. Kinzie? A. I do.

Q. Mr. Kennedy? A. I do

Q. Mr. Wyndham? A. I do; yes, sir.

Q. Do you know where the property is of the Alaska-Juneau Gold Mining Company in Silver Bow Basin, where it is situated? A. I do.

Q. Do you know where the property of the Ebner Gold Mining Company is situated? A. I do.

Q. Do you know about where the Lotta claim is situated upon the ground?

A. I know where the stakes that are claimed as the Lotta stakes are; yes, sir.

Q. What, if anything, did you do in the fall of the year 1910 in the way of surveying the Lotta claim—first, I will ask you if you are familiar with the patent notes of the Lotta claim? A. I am.

Q. As they appear in the patent in evidence here, together with the plat that appears in that patent?

(Testimony of B. D. Stuart.)

A. I am.

Q. Do you know where the stakes are that are on the ground and claimed as the stakes of the Lotta in the testimony that has been offered here in this case by the plaintiff? A. I do; yes.

Q. Have you seen those stakes? A. I have.

Q. You know Gold Creek at that point?

A. I do.

Q. I will ask you to look at that plat—marked Defendant's Exhibit Number 6 for identification—and state to the Court [885] what it is.

A. That is a plat showing Gold Creek and the stakes that are claimed as the stakes of the Lotta upon the ground and the lines connecting them.

Q. I will ask you to explain to the Court what, if anything, you did in the fall of last year looking toward the making of surveys? First, what, if anything, did you do toward the platting and surveying of the creek as indicated upon that plat?

A. I surveyed the creek upon the ground and platted it upon the map.

Q. How did you survey it upon the ground?

A. I surveyed it with a transit.

Q. What course did you run and what method did you employ?

A. I made the traverse from the road.

Q. I now call your attention to the plat marked for identification Defendant's Exhibit #7 and ask you if the creek as represented on that exhibit is the same as on Identification Number 6.

A. I believe it is; yes.

(Testimony of B. D. Stuart.)

Q. You made both maps?

A. I made the other one entirely and this one was from my office. I made portions of this map myself and I checked it over and found it to be correct.

Q. I will ask you to state to the Court what you did in the fall of the year 1910 looking toward the location of that creek upon the ground.

A. The first thing I did was to make a traverse line down the road which is shown on the map as a sinuous double line.

Judge WINN.—Run along your traverse line.

The WITNESS.—I have only a portion of the curve—I have not [886] located them all on the map. I began at my station #93, where I put my pointer, etc.

* * * * *

Q. Every corner that is marked with a circle has been established by you by actual survey upon the ground? A. It has; yes, sir.

Q. And those not marked with circles have not been so established, but have been platted in from other data? A. Yes, sir.

* * * * *

Q. Now, I hand you Defendant's Exhibit #4, that purports to be a location notice of the Oregon claim made by J. P. Corbus, and ask you to look at it. What, if anything, did you do in the way of surveying or platting the Oregon claim in accordance with that notice upon your plat here?

Judge WINN.—We object to anything pertaining to the J. P. Corbus location of the purported claim

(Testimony of B. D. Stuart.)

called the Oregon, for the reason that it has been shown conclusively by the witness Kinzie, who was on the witness-stand, that no assessment work was ever attempted to be made upon this location since 1905, and any evidence of the location of it, if it ever existed, is incompetent, irrelevant and immaterial, and does not tend to prove any of the issues in this case.

Objection overruled. Plaintiff allowed an exception.

Judge WINN.—And this objection goes to anything in connection with the J. P. Corbus location.

By the COURT.—Yes, sir, and exception is allowed.

A. I platted the Oregon claim, the Oregon lode, as called for in this notice upon exhibit #7.

Q. Mark on exhibit 7 the Oregon location as platted according [887] to that notice—"Oregon location as located by J. P. Corbus"—will you please write that so we will know where it is?

A. I will mark it along—the west side line of the Oregon.

Q. That is the one, is it? A. Yes, sir.

Q. Where does the easterly end line of the Oregon as thus platted fall with reference to the easterly end line of the Colorado as platted in accordance with the patent notes?

By the COURT.—There is no easterly end line, is there? A. Northeasterly.

Q. Where would the northerly or easterly end line of that Colorado intercept the northerly or easterly

(Testimony of B. D. Stuart.)

end line of the Oregon thus platted?

A. The northeasterly end line of the Oregon as platted according to the location notice would strike the northeasterly end line of the Colorado if continued, projected, upon the same course, projected rather—

By the COURT.—The Corbus location of the Oregon.

A. Yes. That is, the two lines mentioned at the same course and the Oregon line if produced would practically correspond with the northeasterly end line of the Colorado.

Q. Will you extend the northeasterly end line of the Oregon lode as platted upon your plat 7 in the direction of the Colorado to show where it would fall with reference to the northerly end line of the Colorado?

A. That is as near as I can do it with this instrument.

Mr. HELLENTHAL.—I now offer in evidence the location notice of the Oregon location as made by Datson on July 28, 1910.

Judge WINN.—We object to this location notice. It is insufficient on the face of it to constitute any notice; it is incompetent, irrelevant and immaterial for any purpose of [888] this case. It distinctly appears before the Court now uncontradicted, by the witness Kinzie, that the Oregon location made by J. P. Corbus some time in 1899 was abandoned and forfeited, at least as early as the year 1905, by this same company, and it also affirmatively appears in

(Testimony of B. D. Stuart.)

this case that Datson made the pretended location that is being now tendered in this case, and it was an attempt made by this same company to relocate property which it had already forfeited which would make the location null and void for any purpose, and that affirmatively appears in this case at this time.

By the COURT.—The objection will be overruled at this time, subject to your right to argue the question upon the final argument of the case.

The location notice is marked Defendant's Exhibit #29. Copy is attached hereto and made a part hereof.

Mr. HELLENTHAL.—I now offer in evidence a deed from Datson to the defendant company for this claim so located.

Same objection. Objection overruled. Plaintiff allowed an exception.

The deed is marked Defendant's Exhibit #30. Copy is attached hereto and made a part hereof.

Q. I now hand you Defendant's Exhibit #29, which purports to be a notice of location of the Oregon claim made by R. G. Datson July 28, 1910, and I ask you what, if anything, you did in the way of surveying the claim described in that notice upon the ground.

Same objection and exception to all this line of testimony.

A. I located some of the stakes of this claim as they are upon the ground.

Q. Tell the Court what you did in the way of surveying the claim upon the ground. [889]

(Testimony of B. D. Stuart.)

Q. I found and located upon the ground indicated upon the map—

Q. When you say the map you mean exhibit 7?

A. Yes, sir; the southeast corner, the southwest corner.

Q. What are the numbers of the corners?

A. They are marked—the southeast corner is marked #2.

Q. Are they marked 2 there?

A. Yes, sir; the southwest corner marked #1 and the northwest corner marked #4. I didn't locate that other corner.

Q. Did you find the witness stake?

A. No, sir; I believe I did find a witness stake, come to think of it. It is just above the creek on the Lotta claim.

Q. You found the witness stake to which corner?

A. Corner #3.

Q. Which would be the northeasterly corner?

A. Yes.

Q. Proceed.

A. The way the claim is platted upon the map the north end line was drawn parallel to the south end line as indicated by the stakes upon the ground and give the required distance. The points for corner #2 and 3 join.

Q. What did you find in the way of stakes at corners #2 and 3?

A. I didn't find Number 3 corner. Corner #2, I found. I believe it was a 5x5 unpainted post.

Q. How was it marked?

(Testimony of B. D. Stuart.)

A. It stood three feet above ground, in a mound of stone; the post is at the edge of a bunch of underbrush, on the south side of the bunch, north of Snow-slide Gulch and about 60 feet north of that creek. The post is marked Post #2 Oregon—post Number 2 again.

Q. What, if anything, did you find at Corner #3 of the Oregon? [890] A. I didn't find that.

Q. What did you find at Corner #1?

A. An unpainted post standing in a small pile of rocks, alongside, and a little north of the trail leading from the north end of the Jualpa dam to the cabin occupied by the workmen on the new Alaska-Juneau flume and 50 feet west of Gold Creek—marked Post #1 Oregon.

Q. What, if anything, did you find at Corner #4 as platted on the map by you?

A. I found a post 2 inches by 4 inches and trimmed off at the top, standing 2 feet above ground and marked on the east side, Post #4 Oregon. The post is on the hillside and is about halfway between Gold Creek and the road. It can be seen from the road.

Q. How is that witness corner marked that you found? A. I didn't get up there.

Q. You merely saw the stake?

A. I merely saw the stake and the man that put it there indicated it to me as the stake that was located.

Objected to.

Q. How was the Oregon as thus located upon the ground platted upon your exhibit 7?

(Testimony of B. D. Stuart.)

A. It is platted in accordance with that survey.

Q. Please step here and on the westerly side line of the Oregon as thus platted write these words, "Oregon as Located by Datson."

(Witness does so.)

Q. What, if anything, in the way of rock in place, bearing gold or other precious metals, did you find upon the Oregon location—upon the surface of the Oregon location thus indicated by you? [891]

Judge WINN.—We move to strike all the evidence pertaining to the location of the second Oregon claim known as the Datson Oregon claim, for the reason that there is a variance in the claim as it has been located upon this plat and map by the witness and the allegations of the pleadings in this case.

Motion denied. Plaintiff allowed an exception.

Q. Answer my last question.

A. I never took any samples there.

Q. Did you find any quartz in place?

A. I found quartz seams in place; yes, sir.

Q. Where did you find them?

A. Along the point of the hill, just about above the point marked "Cabin" on the Oregon lode as indicated on exhibit #7—above the flume.

Q. How far above the flume?

A. I should say 60 feet or more, east of the cabin.

Q. Would it be on the boundary of the Parish or off from the Parish?

A. The point I refer to is off the Parish.

Q. On the Oregon?

A. Yes, sir, about 60 feet off the Parish.

(Testimony of B. D. Stuart.)

Q. What would you say as a mining engineer that the quartz in place that you found there carried?

A. I wouldn't say anything as to the contents of it without an assay.

Q. Was it gold-bearing rock?

A. It was quartz—it was rock such as an assay for gold might be obtained from.

Q. What, if anything, did you in the way of surveying the Alaska-Juneau flume-line as indicated upon this map? [892]

A. I surveyed it.

Q. Where did you find that platted line to be with reference to the place you have platted it on this map?

A. I think practically there. I have not located all the points on it, but I think that is very close to it.

Q. What have you done in the way of locating in the dam? A. I have located in the dam.

Q. How does that jibe with this map?

A. I think it jibes all right.

Q. The dam in so far as it crosses the creek is located on what claim?

A. Located on the Oregon.

Q. And where is it located with reference to the southerly side line of the Lotta as that line is marked here—lower side line of the Lotta as claimed by the Ebner Company?

A. The dam itself *acrossed* the creek it located, I should say, almost entirely southwest of that line.

Q. You located the compressor, surveyed that in too? A. I did.

(Testimony of B. D. Stuart.)

Q. How is that upon the ground as compared with the way you have it platted on here?

A. I have checked it on the map—it lies all right.

Q. It is *correct* located? A. Yes, sir.

Q. As well as the pipe-line, the line from the flume to the compressor? A. Yes.

Q. And Snowslide Gulch you have marked here—is that located correctly on the map?

A. I believe so.

Q. As well as all the other matters and things indicated on [893] the plat, they are all correctly platted? A. I believe so.

* * * * *

Q. Do you know where the Borean pit is?

A. I do.

Q. What, if anything, have you done in the way of surveying in the Borean pit?

A. I have surveyed in the Borean pit in reference to the claims around there, claim lines.

Q. Is the Borean pit correctly platted on exhibit 7?

A. It is.

Q. Did you plat in the Parish No. 2 on that plat?

A. I platted it as correctly as I could. I found two stakes of the Parish #2, that is, I presumed them at the time as being Parish #2 stakes—they were not marked for it.

Q. How did you plat it—according to the notice?

A. I platted it according to the—the two stakes I found in the ground are connected with a fine black line. I platted the rest of the claim in accordance with the location notice.

(Testimony of B. D. Stuart.)

Q. You found two stakes. Please, mark those with a letter "P," the two stakes that you found upon the ground of the Parish #2.

(Witness does so.)

Q. (By the COURT.) That is the end line of the two claims? A. Yes, sir.

Q. They are the southerly line of the two claims?

A. I found them on the ground and they seemed to agree in a general way with what the location notice of the two claims called for—I presumed them to be the stakes; they were not marked.

Q. Did you mark the Parish #2 on the plat in accordance with [894] that? A. Yes, sir.

Q. And it is correctly platted on exhibit 7?

A. Yes, sir.

Q. Did you plat the Borean pit in accordance with your surveys and measurements actually made on the ground? A. Yes, sir.

Q. Is that correctly platted in?

A. Yes, sir. I began that survey of the Borean pit from the post for the southeast corner of the Parish #2.

Q. You began from that corner? A. Yes, sir.

Q. And marked it in reference to that?

A. Yes, sir.

Q. It is marked Borean pit?

A. I will further state that the line between these two corners for the Parish upon the ground is brushed out and a number of hoops are set on one right near the southwesterly edge of the Borean pit, the line is indicated in that way upon the ground.

(Testimony of B. D. Stuart.)

Q. What is this little cut you have here?

A. That is in the Borean pit. I may further say in connection with my location of the Parish claim that a portion of the southwesterly side line beginning with the southwest corner and extending over to the brow of the hill just above the two tunnels, marked "tunnel" under the word "nought" on this exhibit, was brushed out and two or three hoops were upon it, and I began at this southwest corner, used that line as brushed out, to give me the direction, and it seemed to correspond in accordance with the southwesterly side line of [895] the Lotta on the ground and continued that line over across Gold Creek and up over the ridge on the far side above the Gold Creek road, and on that line which I must have run out for two thousand feet, I made diligent search for the northwest corner and found no corner there and made diligent search for the northeast corner but found no stake there.

Q. What is that little black picture you have there looks like a tunnel in the Borean pit?

A. That is an open cut.

Q. What is the size of that?

A. At the time I measured it, it was five feet wide, 12 feet long from mouth to face, and eight feet deep at the face.

Q. I hand you exhibit #21 and ask you to look at it and state if that is the same Borean pit.

A. It is; yes, sir.

Q. It indicates that open cut? A. It does.

Q. Mark that open cut on that picture—open cut—

(Testimony of B. D. Stuart.)

right across the face of it.

A. It is indicated on the picture so it can be recognized, it is partially filled with snow and a shovel is stuck into the snow.

Q. At what point were you standing when the picture was taken?

A. I was standing at the point which is the brushed out end-line or the common end-line of the Parish #1 and 2 as indicated by stakes on the ground.

Q. Did you get to the bottom of that—did you dig down to the bottom of that open cut?

A. I did not, at that time.

Q. Did you do it afterwards? [896]

A. I have not since; no, sir.

Q. What is the depth of that cut, do you know?

A. Eight feet deep at the face—

Judge WINN.—We object to that as incompetent, irrelevant and immaterial—no sufficient foundation laid.

The WITNESS.—I measured it.

Objection overruled.

Q. How deep was it?

A. Eight feet deep at the face, at the time I measured it.

Q. Now, how much of the Borean pit is across the line on the Parish No 1? A. It shows on the plat.

Q. What is the character of the ground there with reference to being horizontal or perpendicular—what is the pitch of it?

A. It slopes toward the northwest—that is the general surface of the ground.

(Testimony of B. D. Stuart.)

Q. How much is the pitch approximately?

A. It is fairly level there. I couldn't say exactly; probably 15 or 20 degrees—25, maybe.

Q. Could any work done in the way of washing out or sluicing out or cutting out the Borean pit develop the Parish #2 claim?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial, no foundation laid for the witness to answer and calling for a conclusion of the witness.

Objection overruled. Plaintiff allowed an exception.

A. I can't see how it would develop the Parish #2 as a quartz lode.

Q. What is the character of the rock in the Borean pit? First, I will ask you in the bottom of that open cut, with reference [897] to being in place or otherwise. A. It is slide rock.

Judge WINN.—We object—no sufficient foundation laid to answer the question.

Objection overruled. Plaintiff allowed an exception.

Q. Is it in place or not in place?

A. It is not in place.

Q. What is the character of the rock in the Borean pit—anywhere in the Borean pit? I will change that. What is the character of the rock in the Borean pit, any place within 75 feet of that open cut in any direction, with reference to being in place or otherwise?

Objected to. No foundation laid.

(Testimony of B. D. Stuart.)

Objection overruled. Plaintiff allowed an exception.

A. Not in place—it is slide rock.

Q. How deep in your judgment is the slide?

Same objection. Objection overruled. Plaintiff excepts.

A. I measured the depth of it yesterday, at that open pit—from the bottom of the open cut as it is now to the rim of the Borean pit on the south side, just up from the cut. It is between thirty and forty feet deep there, and the bottom of the cut is still in slide. There has recently been dug a hole in the bottom of that open cut.

Q. How recently?

A. Within a week, anyway—within a few days.

Q. What did you find in the bottom of the hole?

A. This hole uncovered some large loose boulders, but I could see down between the loose boulders and could see some drift material, I should say three feet below the bottom of the cut as it was made originally.
[898]

Q. How large were those boulders?

A. I should say they were a foot or two in diameter.

Q. Where is that hole?

A. It is in the bottom of the open cut.

Q. Indicate it upon exhibit 7 by writing the word “hole.”

A. I will mark it with a small square and then I will mark that “hole.”

Q. Are there any other holes that you saw yester-

(Testimony of B. D. Stuart.)

day that have been dug recently? A. Yes, sir.

Q. Where?

A. Just opposite the mouth of the open cut and across the drain line in the bottom of the pit is a large boulder of ledge rock. There is a small hole dug just below that at a lower elevation than the bottom of the boulder.

Q. Mark that boulder with a circle upon the plat No. 7—mark it, “boulder.”

(Witness does so.)

Q. Now, indicate upon the plat with reference to that boulder the place of the second hole of which you spoke—mark that with a small circle and mark it “hole.”

(Witness does so.)

Q. What did you find in the bottom of that hole, if anything?

A. Slide rock. Also I could see the bottom of the large boulder there and on the side of the boulder nearest to the open cut, open pit, somebody had started to dig under the boulder and had not got very far within, but I dug out with my pick there and I could shove my pick right in under the boulder.

Q. I want you to show upon one of these pictures where that boulder shows—will that show it? [899]

A. Yes, that will show it.

Q. That is exhibit 9. I hand you Number 9 and ask you to mark the word “Boulder” upon the boulder as it appears upon that picture.

(Witness does so.)

Q. That boulder you have marked on Number 9, is

(Testimony of B. D. Stuart.)

that the same boulder you have indicated and marked upon the plat? A. It is.

Q. In that hole you found in the bottom of the Borean pit you say you found some boulders in the bottom of the hole. Were those boulders that were recently deposited in there or were they boulders that appeared to be part of the original slide? I am referring to the hole in the bottom of the pit.

A. Of the open cut?

Q. Yes.

A. I should say they were boulders that were there at the time the slide took place—they had the appearance of never having been disturbed.

Q. Where does the bedrock show nearest to the Borean pit on its strike?

A. It shows up about 100 feet to the west of the open cut, in the Borean pit, as I paced it.

Q. 100 feet to the west of the open cut in the Borean pit?

A. As near as I paced it and it shows up again about 35 feet below that point. Both of these exposures are in the bottom of the drain which comes through the open pit. An additional reason for my being sure that the material in the open cut, in the vicinity of the open cut, is slide rock is from the fact that where the bedrock itself does show up a stream of water shows and above that there is no water shows—it is apparently under the surface—and [900] from the fact that the water shows there *shows* that is the first place where the bedrock is.

(Testimony of B. D. Stuart.)

Q. Did you find the bedrock in Snowslide Gulch?

A. Yes, sir.

* * * * *

Q. Will you please mark upon exhibit 7 the various points in which the bedrock is exposed in the neighborhood of the Borean pit and mark the places so marked by you with the word "bedrock"? I mean the points nearest to the pit.

(Witness does so.)

A. Those are approximately the two points at which I saw the bedrock exposed.

Q. How many points did you name here?

A. Two.

Q. Did you see bedrock at the creek?

A. The bedrock as I saw it in those two points are in the bottom of the creek where the spring shows from under the slide.

Q. Did you see bedrock in Snowslide Gulch?

A. Yes, sir, I did.

Q. Mark the bedrock you saw in Snowslide Gulch also.

A. I saw bedrock in Snowslide Gulch on the south side of the gulch—there is a cliff, I should think, approximately in that position.

Q. Mark it with the word "bedrock."

(Witness does so.)

Q. Did you see bedrock at the creek—first, what is the direction and strike of the country at that point?

A. I took a number of observations of the bedrock in the creek canyon and where it is exposed at the lower end of the Borean pit and the creek bottom

(Testimony of B. D. Stuart.)

and Snowslide Gulch, and I should say the average strike of the country as indicated [901] by the planes of the schist is about 4 north, 40 or 50 west, and dips to the northeast at an angle of about 60 degrees from the horizontal.

Q. Assuming that to be the strike, where would the bedrock show at the creek bank, on the same strike that it shows up in the Borean pit and the Snowslide Gulch?

A. Those pencil lines indicate about the strike of the country and the dip to the northeast.

Q. Did you see bedrock on the bank of the creek, on a line with that pencil? A. I did; yes, sir.

Q. And with the strike of the country?

A. Yes, sir.

Q. Mark the point on the plat where you saw the bedrock on the bank of the creek.

A. It is exposed on the bedrock above and below the Alaska-Juneau flume, up and down.

Q. Mark that line you have drawn indicating the strike of the country with the words "strike of country."

(Witness does so.)

A. It dips 60° to the northeast.

Q. You have already marked it at the Snowslide Gulch? A. Yes; this is the bedrock.

Q. Did you take any samples of bedrock at those points? A. I did; yes, sir.

Q. Have you those here?

A. Yes; this is a sample taken in Snowslide Gulch.

Q. I hand you here a piece of rock marked for

(Testimony of B. D. Stuart.)

identification Exhibit Number 31, and ask you to look at it and state where it came from.

A. This piece marked 31 came from the point on the south side [902] of Snowslide Gulch which I have indicated on exhibit 7 with the word "bedrock" with a lead pencil mark alongside of it.

(Exhibit 31 is admitted in evidence.)

Q. I now hand you a piece of rock marked Defendant's Exhibit #32 and ask you to look at it and state where that came from.

A. That came from the south side of Gold Creek canyon, just above the Alaska-Juneau flume and on the line of the strike of the country from the last-named exhibit.

Q. Approximately at the point marked "bedrock"? A. Marked bedrock upon plat Number 7.

(Exhibit 32 is admitted in evidence.)

Q. I now hand you a piece of rock marked for identification #33 and ask you to look at it and state where it came from.

A. That piece came from the bed of the small stream which drains the Borean pit and approximately on a line between the points where I obtained the two previous samples.

Q. Where is it with reference to the point you have marked on exhibit 7 as bedrock?

A. I believe this came from the lower one of the two places marked bedrock in the Borean pit, in the lower end of the Borean pit.

Q. You took all these samples yourself?

(Testimony of B. D. Stuart.)

A. Yes, sir.

(Exhibit 33 is admitted in evidence.)

Q. I now hand you a piece of rock marked Exhibit 34 and ask you to look at it and state where that came from.

A. This came from the large boulder heretofore referred to as being opposite the mouth of the open cut in the Borean pit—I knocked this piece off the big boulder. [903]

Q. Is that the boulder marked by you on exhibit 7 with the word Boulder? A. It is; yes, sir.

(Exhibit 34 is admitted in evidence.)

Q. These samples are all off the same boulder (referring to a pile of rock)?

A. Yes, sir, they are.

Mr. HELLENTHAL.—These are numerous samples off the same place and I ask they be marked 35 to 40, inclusive. (They are so marked.)

Q. I now call your attention to a number of pieces of rock marked 35, 36, 37, 38, 39 and 40 and ask you to look at them and state where they came from.

A. I do.

Q. Where did they come from?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Plaintiff allowed an exception.

A. Just below the large boulder in the Borean pit, the place where I have my pencil now and indicated by a lead pencil marked "pole." There is a hole dug almost underneath the lower side of the

(Testimony of B. D. Stuart.)

large boulder, recently dug there. I took these samples from about two square feet on the side of that hole.

By the COURT.—This boulder is the big rock shown in the picture?

A. Yes, sir, I took them from the side of that and out of the drift which showed underneath the boulder there, at a lower elevation, at the bottom of the boulder in the undisturbed drift material. The material from which I extracted these rocks was material that had never been disturbed by pick or in any other way, and was evidently as it had been at the [904] time the slide occurred.

(The six pieces of rock are admitted in evidence as Defendant's Exhibits 35, 36, 37, 38, 39 and 40.)

The WITNESS.—They are all different varieties.

Q. I will now ask you what is the character of the various exhibits last received in evidence with reference to being alike or unlike.

A. They are all unlike one another.

Q. Various kinds of rock—what does that indicate?

A. One of them—No. 39—is apparently a water-worn pebble.

Q. Tell what the others are.

A. Thirty-five is a piece of iron-stained quartz; 36 is probably a granite; 40 is termed a greenstone; 37 looks like a very micaceous granite; 38 is a piece of the character of greenstone, different from the other mentioned.

(Testimony of B. D. Stuart.)

Q. What does that indicate to you as a mining engineer?

A. It indicates to me that these pieces of rock must have come from various localities and no two of them from the same original formation, you might call it, or bedrock.

Q. How do the other samples of the bedrock that have been offered in evidence, Numbers 31, 32 and 33, compare as to the character of the rock?

A. All of them are what would be termed chalcolithic schist.

Q. I mean as to being identical or otherwise in character? A. They are identical in character.

Q. How does exhibit #34 compare as to these former exhibits just referred to?

A. That is entirely different rock.

Q. What do you call the other samples of the bedrock? A. Chalcolithic schist. [905]

Q. What is the name given to 34?

A. It looks like a greenstone that had been altered and silica introduced in some of the original elements of the rock.

Q. Has sample 34 any strike at all, any stratification? A. No, sir, it is massive rock.

Q. Is there anything to indicate the strike of the country where that rock came from—is there anything in the large boulder to indicate?

A. The only thing in the way of planes that could be determined are joint planes which are spaced quite far apart. These joint planes seem to have a strike of about north 5° east and dip westerly at

(Testimony of B. D. Stuart.)

an angle of about 20° from the horizontal. Those are the only indications of any planes I could distinguish in the rock.

Q. How do those planes strike with reference to the planes of the bedrock that you found at the points indicated on 7 as bedrock?

A. Those planes would be almost at right angles if the planes of the bedrock strike north 40 to 50 west and dip to the east at an angle of about 60° to the horizontal.

Q. What would that indicate to you with reference to the big rock being in place or otherwise?

A. It would indicate that the large boulder is not in place as bedrock.

Q. Have you made an examination of the country above the Borean pit?

A. I have been over it. I have not made any particular examination of it.

Q. Are there any indications as to the place where the slide broke over? [906]

A. Yes, I think so.

Q. Can you mark on this plat any point above the Borean pit where rock of the character indicated by the large boulder and the other smaller ones may be found?

A. I think such a point would lie off of that map but in a general easterly direction from the Borean pit up toward the head of Snowslide Gulch, perhaps more to the north.

Q. Such rock is found at the point you have last indicated?

(Testimony of B. D. Stuart.)

A. I have never been up there, but I judge from the character of the topography that this slide came from the point I have described.

Q. Now, I will ask you, in your opinion, is there any rock in place within a matter of 75 feet in any direction from the point marked open cut—from the open cut marked by you in the Borean pit?

A. You mean horizontally?

Q. Yes, horizontally 75 feet?

A. I should say not, none exposed.

Q. You surveyed the flume-line of the Alaska-Juneau indicated on exhibit 7? A. Yes, sir.

Q. You have surveyed the creek from the point indicated as the Alaska-Juneau dam up the creek?

A. Yes.

Q. What is the condition of the grade, or if the water were taken up at a point say anywhere from 75 to 150 feet further up the creek, where would the flume grade fall with reference to the place where it is now located?

A. In order to maintain a similar grade from such a point, I would say that the flume would probably in elevation be [907] perhaps fifteen feet higher than the present flume grade, but horizontally it would differ very little on account of the steepness in the bank.

Q. Where would the flume pass with reference to the dam?

Objected to as incompetent, irrelevant and immaterial.

By the COURT.—The only application I could see

(Testimony of B. D. Stuart.)

it could have would be whether this was such a change as would be a total abandonment of their first location of water.

Mr. HELLENTHAL.—Yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. Below the point marked Alaska-Juneau dam on No. 7 for several hundred feet, 300 at least, I should say, the cliff is nearly vertical—in fact, part of the distance where the present flume grade is constructed the cliff almost overhangs it, so that a grade 15 feet above it in elevation would practically occupy almost the same position horizontally, within very small limits.

Cross-examination.

(By Judge WINN.)

Q. How old are you? A. 33.

Q. I believe you stated you were a graduate of some school of mines?

A. Graduate of the University of Montana.

Q. School of Mines or State University?

A. State University.

Q. When did you graduate from that university?

A. 1902.

Q. What did you take up then?

A. I took up a general scientific course. [908]

Q. In the same university?

A. In the same university and then the next year after I was graduated I did some special work in engineering.

Q. What was your scientific course?

(Testimony of B. D. Stuart.)

A. It is the course of study which leads to the degree of Bachelor of Science, I believe.

Q. How long did you pursue that in the university?

A. Four years.

Q. That would take you up to 1906?

A. I mean my regular course was terminated in 1902, my four years.

Q. When did you quit the school for other work?

A. I was out in 1900 with the United States Geological Survey—I was out about five months in that year.

Q. In what State? A. Montana.

Q. How long did you remain in that survey?

A. I was with them altogether from then until the fall of 1906, I believe it was.

Q. In your course in the university did you study surveying and mining engineering?

A. Surveying, not mining engineering at that time, except I had a course in geology.

Q. After leaving the Government service what did you do?

A. I went to the Coeur d'Alene country—was employed by the Federal Mining & Smelting Company.

Q. As mining engineer? A. Yes, sir.

Q. How long did you serve in that capacity?

A. From the spring of 1907 to June of last year.

[909]

Q. When did you get acquainted with Mr. Bradley?

A. I never met Mr. Bradley before this morning—yesterday, rather.

(Testimony of B. D. Stuart.)

Q. Who sent you here last fall?

A. No one sent me.

Q. In whose service did you come here?

A. I was sent for by Mr. Kinzie.

Q. What time did you arrive here last fall?

A. It was on the 15th of October, I believe.

Q. Mr. Kinzie indicated that he wanted you to come here and do some surveying on Gold Creek?

A. At what time—after I arrived?

Q. Yes.

A. Gold Creek and elsewhere.

Q. Was it your principal business to do some surveying on Gold Creek in regard to this property in litigation?

A. I spent two or three weeks up there surveying immediately after that time.

Q. Was Mr. Burch here when you arrived here?

A. Yes, sir, he was.

Q. Mr. Burch was up there with you a considerable portion of the time? A. He was not.

Q. He was not in your survey party? A. No.

Q. He was up there a good deal on the property while you were there? A. He was not.

Q. He was not on the property a good deal?

A. He was with me the first time—that is the only time I remember his being on the property. [910]

Q. What date did you arrive here?

A. The 15th of October.

Q. How long did Mr. Burch remain here after you got here?

A. I believe Mr. Burch went away at the same

(Testimony of B. D. Stuart.)

time—as I recollect it, he went away soon after the trial at Ketchikan and then came back again.

Q. When did you leave?

A. I left shortly before Christmas.

Q. Were you putting in considerable of your time preparing data for the trial of this case while you were here?

A. More or less of the time.

Q. The fact is, you devoted a great portion of your time to that, did you not?

A. No; I should say probably half the time. I was engaged in other work part of the time while I was here.

Q. Over at Treadwell? A. Yes, sir.

Q. How long had you known Mr. Kinzie before you came here?

A. I never had known him before.

Q. You passed about how many weeks upon this property that is in controversy and the surrounding property making a survey last fall?

A. I think from the time I first arrived in the middle of October I was there, as I remember, about two weeks in the fall and then from time to time after that I made various trips up there.

Q. Who assisted you, what other surveyors of the Treadwell assisted you in going over this property?

A. No other surveyor.

Q. Wasn't Whalen with you? [911]

A. No, only one or two days.

Q. You just had your staff of assistants, without any surveyors being with you?

(Testimony of B. D. Stuart.)

A. Yes, sir; up to the time that Judge Lyons issued his order allowing us to go on the Ebner Company property Whalen was not with me.

Q. What time did you spend on the Ebner property besides the time you spent on the defendant company's property up the Basin last fall?

A. It would be hard for me to say in days. I was up there so intermittently.

Q. And after the order was granted by the Court for you parties to go on the Ebner property to make your survey Mr. Whalen accompanied you for what length of time on the work there?

A. Two or three days, as I remember it.

Q. Was there any other surveyor with you during that time? A. Mr. Lindsay.

Q. What portion of that time was he with you?

A. About the same time Whalen was, as I remember.

Q. Did you get all the data and maps and exhibits you have been testifying from while you were here last fall or have you been here just prior to this trial gathering additional data?

A. A very small portion of it I have gathered since I came here.

Q. When did you make your Exhibit Number 7?

A. I didn't make it—only a portion of it. I only made a portion of it.

Q. Was it prepared under your instructions?

A. No, sir; not originally. It was prepared according to my notes—from my notes.

Q. Who did prepare it? [912]

(Testimony of B. D. Stuart.)

A. I believe Mr. Whalen.

Q. Do you know when it was completed?

A. It must have been about two weeks ago, I think—not entirely completed. There has been some additions made to it from time to time since.

Q. There has been quite a number of additions made during the course of this trial?

A. Yes, sir; the Borean pit and one or two other items on it were put on since that time.

Q. Is that all—what about this other plat Number 6, when was that made?

A. I made that from my own notes while I was away—while I was in Montana.

Q. Has anything been added to or taken from that since you came here and since the trial commenced?

A. Yes, the claim marked out there in red—

Q. The claim marked there in red has been cut on since you came here? A. Yes, sir.

Q. And since the commencement of the trial?

A. No, I believe not since the commencement of the trial.

Q. When?

A. I think it was about the time the trial commenced or a little before as I remember it, that was put on there.

Q. Who put it on? A. I did.

Q. Do you remember whether the trial had commenced or not?

A. If it had, it was during the first day or two of the trial. I don't remember exactly.

Q. The one marked in red on 6 of yours—what

(Testimony of B. D. Stuart.)

does that indicate? [913]

A. That indicates the Lotta claim as put upon the map, according to the distances from corner 5 and corner 2 of the Lotta, as they are supposed to be, which are indicated in the notes of the patent.

* * * * *

Q. I believe you stated that in the survey of the two Oregon claims you took the location notices for your basis?

A. For the earlier location, but for the later one I took the posts as I found them on the ground.

Q. For the later or Datson Oregon claim you did not take the location notice into consideration?

A. I just took the posts as they are on the ground and connected them up.

Q. Now, the Borean pit, as you have located it by those dotted lines on your exhibit, was that location made by an actual survey; in other words, do I understand that you just platted the Borean pit there with these dotted lines approximately, or have you got the lines absolutely correct, from survey?

A. I wouldn't say they are absolutely correct, but I located about seven points at the angle as they show here, around there, starting at the post you now describe as the southeast corner of the Parish #2 and running down to that point. The open cut I located in the same way, locating both ends of it.

Q. The Borean Pit is not a pit, in the common acceptance of the word?

A. No, I should consider it a placer wash.

Q. The part which comes up here, which you have

(Testimony of B. D. Stuart.)

written on this map Borean pit, which is the wider part of it—is that [914] deeper than the lower part if it, excavated deeper?

A. The bottom with reference to the rim?

Q. I mean excavated deeper?

A. Somewhat deeper, I think.

Q. Than the lower part of it?

A. Yes, sir.

Q. Do you remember about the depth of the lower part of it where you have marked the hole—did you measure to see how deep it was?

A. I took observations to see how deep it was, by means of a hand level.

Q. What is the depth of it at its deepest point?

A. I took the elevation at a point on exhibit 7, which is indicated on the map just west of the large boulder and marked hole. I started from the bottom of that and took the difference in elevation between the bottom of that hole and the rim of the pit which is quite distinct.

Q. Did you make such calculations that you could approximate the depth of it? A. I did.

Q. What is the approximate depth?

A. At that point the depth is 40 feet.

Q. When did you make that measurement?

A. I believe that was yesterday I made that measurement.

Q. You never had measured it until yesterday?

A. I never measured the elevation particularly; no.

Q. That is one part, then, that you added to this

(Testimony of B. D. Stuart.)

map since the commencement of the trial?

A. That is not on the map.

Q. But it is data you have added and have marked the point on the map this morning? [915]

Q. Was there any loose dirt in the bottom of that pit at its deepest point or what was there yesterday—at the deepest point?

A. Well, it is rather hard to know what you mean by the deepest point in the pit. There is a general slope of the pit from the upper or eastern end to the lower end.

Q. I mean where you measured it—where you testified you made the measurements?

A. At the mouth of the open cut there?

Q. Yes.

A. None revealed; no, sir.

Q. What time were you up there yesterday?

A. It was about four o'clock in the afternoon.

Q. Was there anybody else up around there?

A. No, I was alone.

Q. You saw where there had been—

A. I saw where there had been fresh diggings done.

Q. How did you find the part of the open cut or wash from what you have marked on this plat “hole” down to where you have marked bedrock—did you find any loose dirt on the bottom anywhere along that?

A. Yes; as you go from the east end of the pit to the westerly end or mouth of it, I would say the wash seems to get increasingly shallow as would be antici-

(Testimony of B. D. Stuart.)

pated, because the bulk of the slide lies perhaps up above and it gets shallower until it finally disappears entirely below and the bedrock shows up above the rim of the canyon.

Q. How far is it where this last bedrock shows up from Gold Creek approximately?

A. About 300 feet from the creek to the canyon—it is less than that to the rim of the canyon. [916]

Q. How far to the rim of the canyon?

A. I can approximate that—straight across, I would say, it is about 100 feet.

Q. To the rim of the canyon? A. Yes, sir.

Q. The canyon is quite wide there?

A. From south to north? A. Yes, sir.

Q. That point that you measured down to—is the canyon wide there?

A. No, both sides of the canyon there are quite precipitous—it is difficult to climb up either side.

Q. From the top of the canyon where you start to descend the creek on one side and likewise from a point on the other side is a good deal wider than the actual creek-bed at the surface of the water?

A. Yes, sir, although the slopes are pretty steep there.

Q. I understand you drew some lines here for Mr. Hellenthal at a point where you say you discovered bedrock in Snowslide Gulch, from which you obtained some rock that has been offered in evidence in this case—as I understand, you approximately drew those lines as you indicated on this exhibit?

A. I did, yes—they are just approximately—they

(Testimony of B. D. Stuart.)

are quite close to the truth. I think I used a protractor in putting them on.

Q. You said the formation or strike of the formation of the country runs approximately along those lines? A. I believe so; yes, sir.

Q. Then, the Oregon lode claim would not be made with respect to the formation?

A. Not with respect to the formation—there are some quite prominent quartz seams that strike in a different direction. [917]

Q. What did you say the dip of that was, to Mr. Hellenthal?

A. Of the general formation? Of the schist?

Q. Yes.

A. It is, as I determined, about 60° from the horizontal, to the northeast.

Q. Did you accurately determine that?

A. I made perhaps a dozen observations in different places, maybe more than that.

Q. And you say it is approximately what?

A. 50 or 60° as I took them.

Q. As I understand, you do not testify that these lines you drew here are absolutely correct, they might go a little further to the east or west than you have drawn them—you have approximately drawn them?

A. No; I put them in there by means of a protractor, those lead pencil lines. I used this fine black line as north and turned an angle of 40° by means of a protractor.

Q. Did you go down to the creek to see where the

(Testimony of B. D. Stuart.)

outcroppings were or bedrock appeared down in the creek? A. I did; yes, sir.

Q. Does the outcropping there in the creek as it actually exists correspond in line with the lead pencil marks you have drawn—you say you found bedrock down by the creek? A. Yes, sir.

Q. And found bedrock up here at these two places that you have marked bedrock in one part of the Borean pit? A. Yes.

Q. And you found bedrock up in Snowslide Gulch? A. Yes, sir.

Q. Now, you got three points there which would determine the [918] course of a line?

A. Approximately, yes.

Q. Do your lines you have on here, your lead pencil lines, follow up the three principal points you find the bedrock?

A. I think what you are getting at, whether on the ground I followed that line in determining this?

Q. Yes.

A. Yes; as near as I could I ran through what I thought would be the line.

Q. Indicate down at the creek the closest part of the creek you found the bedrock?

A. Right at the bank.

Q. Mark it bank—

A. Right in the bottom of the creek, below the flume-line in some places there is slide rock where the flume grade has been dumped from the flume grade as carried along there—in places the bedrock has been exposed by that rock dumped down.

(Testimony of B. D. Stuart.)

Q. Where did you find bedrock on the bank of the creek?

A. I think I found bedrock right along the bank of the creek.

Q. I would like to have that point as definite as possible.

A. I think there is bedrock all along here in the bed of the creek up on the bank—there are boulders lying along there that were dumped over in the process of the construction of that flume.

Q. And if there is bedrock there it is probably covered up?

A. In places it is covered up and in places it is exposed—above the flume it is exposed quite extensively.

Q. Before this mucking out or dumping was done there, did you make any examination to find out where the bedrock was? [919] A. No I did not.

Q. I wish you would indicate between what points on the creek here as near as you can remember you found bedrock, that is, either on the bank or in the bed of the creek, and distinguish one from the other when you make your markings.

A. I don't know that I could say exactly on this map the points I saw it. This whole hillside is exposed on the northwest side of the creek, I would say, from a point opposite that—marked "cabin"—up to say the intersection of the green lines near the word "Oregon."

Q. Near the letter "O" in the word "Oregon"?

A. Yes, sir. The bedrock is exposed there and

(Testimony of B. D. Stuart.)

the strike of it and dip and everything seems to correspond with what it is on the south side of the creek, as I determined it, and I consequently infer that the bedrock continues there on the same strike and dip.

Q. Then, you would also infer somewhat that the bedrock extended through from where you have marked "bedrock" in the Borean Pit up on to Snow-slide Gulch? A. Yes, I would.

Q. At just what depth, you don't know, from the surface? A. I don't know; no.

Q. It depends on the depth of the slide?

A. Entirely. I would like to explain one matter. Of course, the formation striking as it does to the northeast as you descend at a steep slope, it throws a point in the creek bottom which would correspond to a point up on the bank further up the creek, so that a point which would be exactly in line here with this line, unless it were at the same elevation above the creek would not be in the same [920] line on account of the dip the formation has.

Q. When did you first examine this ground you have just been testifying concerning for bedrock?

A. First examined it to find out whether there was bedrock there?

Q. Yes.

A. The first time I really paid any attention to the formation up there was two weeks ago yesterday—I believe that was the time.

Q. I have forgotten what you said this morning that that part of exhibit 21 that is covered with

(Testimony of B. D. Stuart.)

snow, in which the spade is sticking in—what is that did you say?

A. That snow is in an open cut, partially filling an open cut—the sides of the cut are shown by this rock in the shape of a wall on either side.

Q. Is that in any way connected with the Borean pit? A. It is—it is in the Borean pit.

Q. On exhibit 7, tell about where that snow appears and that spade is sticking in, in this photograph.

A. The open cut which the photograph shows is shown on exhibit 7 by this black line.

Q. Near what?

A. It is just above “o” in the word “Borean.” The point where the shovel is stuck is approximately where the lead pencil mark appears in the cut which is marked “hole.”

Q. You didn’t do any excavating up there yourself on yesterday?

A. I excavated a little bit with my pick.

Q. You didn’t clean out this open cut?

A. No, it had already been cleaned out before I got there.

Q. Had the dirt been put back in or had they left the dirt out? [921]

A. No; someone had cleaned out the bottom of the pit and dug a hole about 14 inches deep in the bottom of it. That is where I described that you could see down between the cracks, through the cracks between the boulders and see the slide material down there.

(Testimony of B. D. Stuart.)

Q. How big a crack did you look through the rocks to see that?

A. It was a crack probably two inches wide.

Q. How about the lower part of that Borean pit or cut, the lower part you have marked bedrock—had that lately been cleaned off?

A. Yes, it had; it had been dug out and quite a little embankment thrown out on the side.

Q. How deep was it there when you looked through that crevice down to the bottom where you say you saw this slide?

A. From the bottom of the hole?

Q. From the top of the hole as you looked down?

A. It was a foot and a half or more—which would make it about three feet below the bottom of the open cut as it originally was.

Q. Did you mark on this map here where you took these samples? A. I did; yes, sir.

Q. You indicated you took some samples up at Snowslide Gulch? A. Yes, sir.

Q. Where you marked “bedrock”?

A. One sample was taken there.

Q. And you took some samples at each one of these points marked bedrock in the mouth of the Borean pit or portion of the tunnel or open cut that leads up? A. Yes, sir.

Q. Did you get any down at the creek?

A. No, I don't believe I marked that. I will mark it for you— [922] it was just above the flume, practically at that point which I have marked

(Testimony of B. D. Stuart.)

“bedrock,” and you can get it by means of the arrow on exhibit 7.

Q. You don't know what discovery was relied upon in the location of the Datson Oregon claim, of your own knowledge? A. No.

Q. Nor you don't know what discovery was relied upon in the Canyon Claim, of your own knowledge?

A. No.

Q. You had nothing to do with the location of those claims? A. I was not here at that time.

Q. What experience have you had in testifying upon the witness-stand before?

A. The only other time I was on the stand was in a case for damages in a water suit, in which the consideration was about \$70.

Q. You are somewhat of an amateur?

A. I am very much of an amateur; yes, sir.

Q. What actual experience in mining have you had—that was extended over the time you were with what company?

A. The Federal—and when I was with the Geological Survey—nearly all the time, that is the last three years in which I was with the Geological Survey, we were in mining districts and did more or less in the study of geology and mines.

Q. Your work has been largely, though, surveying, that is mining surveying, has it not?

A. Yes, sir, largely,—when I was with the Federal Company I made considerable study of the mines and geology of the [923] mines, made geological maps of mining properties and examined outside

(Testimony of B. D. Stuart.)

properties for them, with a view to purchasing properties.

Judge WINN.—That is all.

(By Mr. HELLENTHAL.)

* * * * *

Q. Are you acquainted with the *discover* points on the Oregon claim?

A. Not from my personal knowledge; no, I am not.

Q. Have they been pointed out to you?

A. Yes, sir, they have been pointed out to me.

Witness excused. [924]

[Testimony of O. M. Harry, for Defendant.]

O. M. HARRY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. What is your name? A. O. M. Harry.

Q. Your residence? A. Douglass.

Q. Were you employed by the Alaska-Juneau Gold Mining Company in the summer of 1910?

A. Yes, sir.

Q. What time were you employed?

A. From August first to New Year's day.

Q. Just state to the Court what you did pursuant to that employment—where did you go?

A. Why, Mr. Kinzie called me into the office and told me that one of the men there—

Objected to.

Q. Where were you employed to go?

(Testimony of O. M. Harry.)

A. To the Alaska-Juneau Mining Co. up here.

Q. Are you acquainted with the ground in controversy in this suit, being the ground known as the Oregon claim? A. Yes, sir.

Q. And the flume-line as now constructed by the Alaska-Juneau Gold Mining Co.? A. Yes, sir.

Q. Just state what you did when you went up there—what did you find there first?

A. I went up on August first and looked the claim all over as much as I could that day, to see if there had been any assessment work done on it and I didn't find any; then I came down to the present location of the cabin cleaned off [925] some brush there in case I sent some one up there to start the work, so they would know where to start the cabin and started a short piece of trail up the creek. That was on August first. August third I went back to the present location of the cabin and up the creek, cut some steps up the bank, towards where the present location of the flume is, with a view to getting around up to where the dam now is located, and I started up along that bank and it was too hard for me to get around that way, and I went up on top of the hill over the road and went around south of the present dam-site and cut a piece of trail where the dam is now. I went up and put in some boards in there to change the water, to wash the gravel off, as I was told to clean out everything there and get everything ready to start the dam at a point lower down, and I went down and cleaned out tree-tops and boards and some rocks and threw them into the creek.

(Testimony of O. M. Harry.)

Q. At what point?

A. At about where the dam is now, and I got through that day and started to come down the flume-line to come to Juneau, and I saw a hole in the bank on the south side of the creek that looked like a tunnel, and I went over and examined that. While I was examining the claim on the first, this being down right under the cliff I did not see it, but on the third I saw this hole and went over and went into it.

Q. Now, describe to the Court the appearance of that tunnel with reference to age and marks.

A. It was grown with grass and weeds and bushes and moss and didn't look like there had been anything done in it for some time. [926]

Q. Have you been around the woods a good deal?

A. Yes, sir.

Q. Engaged in lumbering?

A. Well, I have been around the woods all my life—logging and various occupations.

Q. State what age, from the appearance and ground around there, that tunnel would indicate.

Judge WINN.—We object to that as incompetent, irrelevant and immaterial and no foundation laid for it.

Objection overruled. Plaintiff allowed an exception.

A. Well, a fresh cut will show, as anybody who has ever cut a green limb with an ax knows. You can take it a year afterwards and there is a growth starts to come over it and a year later on or two years the end of the limb would practically be half grown

(Testimony of O. M. Harry.)

over, so anybody could see whether it was more than a year or two old.

Q. What age did this appear to have since work had been done on it?

A. I don't think by the looks of the tunnel there had been anything done in the inside for a couple of years.

Q. Did anyone go up there with you and show you where the Oregon claim was?

A. Yes; there was a man went up there with me.

Q. Who went up? A. I don't recall his name.

Judge WINN.—We object to anything about the Oregon claim for the reason that it has been admitted that this claim was abandoned and forfeited.

By the COURT.—If they are contending you had no discovery on the Parish #2, it would have some bearing on the status [927] of the ground, whether it was open to their last location or not. Objection overruled. Plaintiff allowed an exception.

A. It was one of the men that works in the office over there. I can't just recall his name.

Q. Describe what he did.

A. He took me up to the Jualpa dam.

Q. It was Mr. Summers, wasn't it?

A. Yes, it was Mr. Summers. He took me up to the Jualpa dam and showed me the corner across from my cabin and about where the corner was up there.

Q. He pointed out the general directions of the claim? A. The general outlines of the claim.

(Testimony of O. M. Harry.)

Q. How long was it before you got your cabin built?

A. I started to build the cabin on the 5th or 6th—started to take lumber down on the 5th, and I think we were seven and one-half days building the cabin. It was about the 12th or 14th when we got the cabin done.

Q. Did you find the Alaska-Juneau Company's water notice up the creek above the present intake?

A. Yes, sir.

Q. Now, go ahead and describe to the Court what work you did further on the claim.

A. Well, a portion of every day I was engaged in cutting trails so the men could go up on to the flume and built a trail up along the creek, put a board across so they could get up around to the dam, and I cut steps in different places along there so they could get up on the flume grade and brush out along same on the bank there where the present site of the flume grade is. I was engaged off and on at that from that on until I left there. [928]

Q. Just explain to the Court the character of the ground between the portal of the Alaska-Juneau tunnel near Snowslide Gulch and the intake, the character and contour of the ground.

A. You have reference to the tunnel where they started to do the first assessment work—that short tunnel above my cabin?

Q. Yes; there are two tunnels there and they are practically in the same place—one is above the other.

A. That is not on Snowslide Gulch?

(Testimony of O. M. Harry.)

Q. It is quite a distance up?

A. Well, just above the two tunnels there, there is a dump with tailings from this pit you people were talking about, the Borean pit, and from that tailings on up to the dam, why, it is almost a straight up and down cliff of slide rock, and just above the tailings, along the rim of the canyon, as you call it, that is all slide rock, but above my house there is this solid rock and after you get over the rim, it is a gravel-bed from there up on the bench back until you start to raise up to the top of the mountain.

Q. Explain the direction and character of the trails that you cut out from your cabin up the creek.

A. After building my cabin I went up the creek a little ways and then I cut these steps to the present line of the flume grade in different places, and then along here at the bottom of this dump, as we call it, from this pit, it was so steep you couldn't walk along there, and I leveled off the rocks so the men could come up and down there to the present dam-site—put a board across there.

Q. Where did you put the board across?

A. About here (indicating), and then I cleaned that trail out [929] on this side of the dam and then above my cabin here I started a trail up over that, because the men couldn't walk along, it was so steep, until they had blasted out there, and I put a trail up over the hill about here, where this sluiceway is here, up over the hill and around like that, and connected with the end of this little short piece of trail I had cut down here; and then there is a

(Testimony of O. M. Harry.)

trail comes up this way to Snowslide Gulch, and I put a ladder across there and cut a trail so the men could go up around and come up this way if they wanted to; that makes three trails besides those steps, and I brushed out along the bank here, along the present grade of the flume-line and around this way—brushed out as far as the cliff. (The witness has been referring to exhibit 7.)

Q. While you were doing this work up there were you interfered with at any time? A. No, sir.

Q. When was it you left this portion of Gold Creek?

A. About October first—somewhere along there.

Q. Did you see anybody doing any work on the property while you were down there, that is, any of the California & Nevada Copper Company people?

A. I think, if I remember right, that about that time—that was the time, I think, if I remember right—that they started to dig in the side of the bank above the present dam-site.

Q. About the time you left there?

A. Yes, and there was surveyors around there occasionally and on that line that crossed right there, that black line that crossed the present dam-site also below my cabin along the creek.

Q. They commenced to work up there shortly before you left? [930] A. Yes, sir.

Q. Have you any way of placing the date approximately when you first saw anybody in this tunnel you have described a moment ago—the lower tunnel?

A. It was some time between the middle of Sep-

(Testimony of O. M. Harry.)

tember and first of October—I couldn't just place the date now. I did have all those notes but they were burned up in a fire over at Douglas recently.

Q. Before that time, outside of the surveying parties, had you seen anyone doing any work on the ground south of the dam on the creek? I don't mean south, exactly, but down the creek from the present dam-site.

A. No, not on the side my house is on; over on the flume side, on the Jualpa flume, I think, if I remember right, they were tearing up part of the flume there.

Q. That is high up on the hill? A. Yes.

Q. On the very bank of the creek?

A. Yes, sir.

Q. That is on the flume grade of the California & Nevada Company? A. Yes, sir.

Q. Are you referring to the new grade of the California & Nevada Copper Company?

A. That is the flume across from my house, the old flume. I saw these other people working on the old flume. They were tearing it up.

Judge WINN.—He means the Jualpa high line flume.

The WITNESS.—Yes, sir.

Q. When did you get men up there to help you?

A. I got men there on the 6th—I had one man there on the 5th.

Q. Month? A. 5th of August. [931]

Q. That was in building the house?

A. That was in carrying the lumber down ready

(Testimony of O. M. Harry.)

for the house on the 5th and we started the house on the 6th.

Q. Tell the Court about the crews that came up there after that time.

A. And shortly after we had the house done there was a couple of Finlanders came up there and took a contract of putting in that upper tunnel, and from that on there was more men added from time to time until I left there.

Q. When you left there what was the state of the grade with reference to completion?

A. The flume grade was nearly completed.

Q. That is, how far up?

A. From the tunnel up to the dam, I think it was just about all done, with the exceptions of a little blasting below the dam.

Q. Some rock work?

A. Yes, some rock work.

Q. I will call your attention to the cliff there. You had not been able to do anything on the cliff where it is precipitous until the grade had been completed from the lower end of the dam?

A. Well, I could not, because I couldn't get around there, handy.

Q. It wasn't practicable for anybody to walk along there? I am speaking of the gang.

A. It wasn't practicable for anybody to walk along there unless they could grade it out or blast it out, so they could get along there on the cliff.

Q. Was there any sign of habitation on the ground below the present dam site when you went up there?

(Testimony of O. M. Harry.)

A. No, sir. [932]

Q. Where anybody could live? A. No.

Q. Or occupy the claim 24 hours in the day?

A. No, sir.

Q. Was there a blacksmith-shop or a structure at the mouth of the tunnel that you have been speaking of when you went up there?

A. Not when I went up there. There was later on.

Q. Any sign of one? A. No.

Cross-examination.

(By Judge WINN.)

Q. You went up there about the first of August, 1910. Had there been any lumber delivered on the ground to complete your cabin at that time?

A. No.

Q. How long after the first did your lumber come up?

A. The lumber started to come up on the 5th.

Q. And then you got the house built? At what date was it completed?

A. About the 12th or 14th of August.

Q. During that time had you done any work on the trail? A. Yes.

Q. How many days had you put on the trail?

A. I couldn't just state how many days. Sometimes I would have to work there a while and then go down and look after the men.

Q. You looked after the men and getting the lumber up there too? A. Part of the time; yes.

Q. After these men had completed the house there

(Testimony of O. M. Harry.)

wasn't anyone assisting you in any work until some time about the 11th [933] or 12th of September?

A. Oh, yes; it was only a short time after we had the house done up there until this Finlander came up there and took that contract.

Q. If Mr. Kinzie said that they didn't commence work there until the 11th or 12th of September, how about that?

A. That is as near as my recollection is—he may be right. They came up there, I know, and were at the portal of that tunnel shortly after we had the house built—sometime between the time I had the house built and the first of September, that is my recollection, if my recollection is right.

Q. You are sure it wasn't as late as the 11th or 12th of September before they came up there and went to work?

A. They might not have started active operations in the tunnel possibly until that time, but they were up there before.

Q. Had they done any work before the 11th or 12th of September?

A. Borrowed my shovel and pick one day and went up there and dug around to see a good place to start in.

Q. You don't remember that date?

A. No, not the exact day.

Q. Did they continue the work after that day they borrowed your pick?

A. No, they were away a few days but they came back.

(Testimony of O. M. Harry.)

Q. When they came back they went to work and stayed there regularly?

A. Yes, they stayed down town a few days and came then and put a tent outside my cabin and built a little blacksmith-shop to keep their tools.

Q. That is one of the tunnels they commenced, to put the flume through, to carry the water down?
[934]

A. That is what I understand it was for—to carry the water through that point.

Q. Is that the lower tunnel they commenced to work on—you afterwards built another one?

A. It was the upper one.

Q. Now, you don't remember just what date, then, any other men came up there to go to work on the trail, do you?

A. There was never any men worked on the trails around there except myself.

Q. These other men, then, that came up to work, besides those that were running the tunnel—what did they go up there for?

A. They dropped up there one or two at a time, at different dates.

Q. What were they working on?

A. On the flume grade.

Q. Are you certain that you left this cabin and went to live somewhere else on the first day of October?

A. I don't think it would be later than the third, anyway.

Q. You were up there on the third day of October

(Testimony of O. M. Harry.)

when the blasting went on, about there where the dam is?

A. I was backwards and forwards between my cabin and my tent there.

Q. Then you were living in the cabin as late as the third or fourth of October?

A. Possibly I was.

Q. You didn't have the grade completed clear up where that dam was completed on the third or fourth of October? A. All except the rock work.

Q. If Mr. Kinzie testified that there wasn't any grade done within 300 feet down the creek from where your present flume is on the third day of October when that bombardment took [935] place, do you think he is mistaken or you are mistaken?

A. All the dirt you could remove with a pick and shovel from the portal of that tunnel up to where you get to the solid rock of the cliff was done, and I don't think there was 300 feet left. It may have been that much but I don't think so. Mr. Kinzie has probably been over there and measured it while I walked on the other side and looked at it after they started to work there—that is the only difference, in judgment, that I know of.

Q. It is very difficult to get around on the hill to do a great deal of this work? A. It was for me.

Q. You have an artificial limb, have you not?

A. Yes, sir.

Q. And it makes it difficult for you to get around?

A. Yes, sir.

(Testimony of O. M. Harry.)

Q. You say when you first went up there you went up to some place and put in some little sluice-boxes like to divert the water from the creek to wash off some gravel or something? A. Yes.

Q. You are sure you put those sluice-boxes in about where the present dam is of the Alaska-Juneau Company? A. No, just above there.

Q. Do you remember seeing Mulligan's water notice stuck up? A. I do.

Q. Where was your sluice-boxes, as you call them, put in reference to where Mulligan's water notice was stuck? A. About the same place.

Q. Following the meanders of the creek that was fully 100 or [936] 150 feet up the creek from where the present dam is?

A. Take the circle of the creek, it would be but straight across; I don't think it would be quite that far.

Q. It was on account of the contemplation of Mr. Kinzie's people taking the water out at this place where you first put the sluice-boxes in that that first high tunnel was run down there, wasn't it?

A. They had not decided at that time definitely where they were going to put in the dam.

Q. They changed the grade of that flume line, did they not, while you were there?

A. I think they did—yes, I know they did.

Q. Then, these two tunnels were run on account of the change in the grade that was made?

A. Yes, I suppose that's it.

Q. After you left up there, left the cabin, on Oc-

(Testimony of O. M. Harry.)

tober first, where did you go?

A. I went up above the Alaska Ebner mill—just by the Ebner mill.

Q. It was you that went up there under the instructions of Mr. Kennedy and put a tent across the right of way of the flume line of Mr. Mackey's people?

A. Yes, sir.

Q. You were doing up there just as you were directed by Mr. Kinzie—he was the man you looked to to direct you?

A. I had three or four people that I took orders from up there, or five or six.

Q. Who were the rest besides Kinzie?

A. Mr. Kennedy, Burch and this gentleman that was just on the stand. [937]

Q. Mr. Stuart?

A. Mr. Stuart, Mr. Kennedy, Mr. Scotty Bruce.

Q. And Mr. Jones up there, the assistant superintendent of the Alaska-Juneau, did he give you orders?

A. Yes.

(By Mr. SHACKLEFORD.)

Q. This incident that Judge Winn is talking about, your putting a tent along the trough in which they were building a flume up above the Ebner mill—you were sent up there to take possession of a claim located by the company, were you not?

Objected to as leading.

By the COURT.—I understand you claimed a placer claim there—I think that has been shown—you each had platted claims there.

Mr. SHACKLEFORD.—Yes, sir.

Witness excused.

**[Recital Re Testimony of Mr. Stewart, for Defendant
(Recalled).]**

(Mr. Stewart recalled—testimony entirely regarding Lotta.) [938]

**[Testimony of Grover Winn, for Defendant
(Recalled).]**

GROVER WINN, recalled as a witness in behalf of the defendant, testified as follows:

(By Mr. SHACKLEFORD.)

Q. You are the United States Commissioner for the Juneau recording precinct? A. I am.

Q. Have you made search in your records for an affidavit of labor for the year 1909 on the Parish Number 2 lode claim? A. I have.

Q. Have you found any?

Judge WINN.—We object to that as incompetent, irrelevant and immaterial whether there is one there or not.

Objection overruled. Plaintiff allowed an exception.

A. No, sir; I find no record of any proof of labor on the Parish #2.

Witness excused.

[Testimony of R. G. Whalen, for Defendant.]

R. G. WHALEN, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. What is your business, trade, occupation or profession? A. Surveyor.

(Testimony of R. G. Whalen.)

Q. Where are you employed?

A. The Alaska-Treadwell Gold Mining Company at Treadwell.

Q. Do you know Mr. Stewart? A. I do.

Q. Are you familiar with the plat offered in evidence here as exhibit No. 7? A. Yes, sir. [939]

Q. You heard the testimony of Mr. Stewart in regard to the matters and things delineated on that plat?

A. Yes, sir.

Q. What, if anything, did you do in the way of checking up Mr. Stewart's work in locating the creek as delineated on Exhibit Number 7?

A. I was with Mr. Stewart when he located the creek from a point a little above the Alaska-Juneau cabin up to the bottom of the falls just below the Ebner mill.

Q. And you checked up the survey along that entire line?

A. I have gone over the survey, yes, and the notes.

Q. Are Mr. Stewart's notes in that regard correct or otherwise?

A. As far as I know, as far as I can tell, they are correct—there are no errors apparent.

Q. Is the creek as delineated on exhibit 7 accurately delineated with reference to the way it lies on the ground? A. It is to the best of my knowledge.

* * * * *

Q. Were you with Mr. Stewart when he surveyed across the canyon at a point immediately above the Alaska-Juneau dam?

A. I was with him when he located that point.

(Testimony of R. G. Whalen.)

Q. What is the width of that canyon at that point, the water level?

A. The width of the canyon at that point at the water level is about 25 feet.

Q. How wide is the canyon when you get up to the first bench?

A. What do you mean by the first bench?

Q. The first level place you get on the bank—how far is it across from rim to rim?

A. In the bottom of the canyon just at the water level? I [940] should say it was just about 35 or 40 feet.

Q. How wide is the canyon from rim to rim measured at the elevation you reach when you get to the first level spot of the first bench?

A. About 150 feet.

Q. How high is that above the water level?

A. About 60 feet, I should say.

Q. Between that point and the bottom of the creek, what is the condition of the banks?

A. The banks on the southeast side are rocky and precipitous and on the other side it is more or less rock, but the bedrock is not very deep right in the bank—under the brow it is rough in places.

Q. How does that point in the canyon compare with the balance of the canyon through which the creek flows?

A. Between the falls and the Alaska-Juneau dam, between a point opposite the Ebner mill and the Alaska-Juneau dam—the canyon is not quite so high at the Alaska-Juneau dam as it is above, but it is

(Testimony of R. G. Whalen.)

about as steep.

Q. The width of the canyon is approximately the same?

A. As the canyon is deeper above the width would be greater at the top. The width at the bottom of the canyon through which the creek flows varies. In some places the creek would be at this stage about 8 feet wide and other places about 20 feet wide,—some places 25, perhaps.

Q. I am speaking, now, of the width of the canyon at the water level—I am speaking of that portion of the canyon through which the creek might change its course from side to side and from bank to bank. How wide is the canyon at different portions along the creek—that is, that part of the creek I have indicated? [941]

A. Twenty to thirty-five feet.

Q. Were you with Mr. Stewart when he located the points indicated on the Colorado to which he testified?

A. I was not. I was with him when he located Corner #4 by triangulation from the road but not when he located the corner up on the hillside.

Q. You don't know about the other corner?

A. No.

Q. Did you make exhibit "11"?

A. I made the greater part of it; yes, sir.

Q. I will ask you regarding the correctness of that exhibit.

A. That is simply a general map to show the plan of the workings and is not intended to be absolutely

(Testimony of R. G. Whalen.)

correct in all its details because it is on such a small scale.

Q. I now call your attention to an exhibit offered in evidence, the plat attached to the complaint in Case #823-A, and ask you if you also made that plat. I hand you exhibit "II" and ask you if you made that plat. A. Yes, sir.

Q. Is the creek correctly delineated on that map?

A. It is not.

Judge WINN.—If the object of this is to impeach their own witness, we object to it.

Objection overruled. Plaintiff allowed an exception.

Q. Is the creek correctly sketched into that map?

A. It is not exactly correct; no, sir.

Q. Is the creek sketched in there from measurements made upon the ground by you?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. It is not. [942]

Q. Where did you get the data from which you sketched the creek in?

A. In this exhibit the creek is sketched, traced from an old plat that was on file in our office.

Q. You don't know anything about its correctness or incorrectness except to the extent it compares with exhibits 11, 6 and 7? A. I do not.

Q. You were up to the Borean pit this morning?

A. I was.

Q. Do you know the difference between bedrock and slide? A. I do.

(Testimony of R. G. Whalen.)

Q. Do you do the geological work for the Alaska-Juneau Company? A. I do; I do the mapping.

Q. The underground work?

A. The mapping and the underground work, keeping the maps up to date.

Q. How long have you done that?

A. I have done it off and on. I have done it for about two years.

Q. Have you had any instruction in geology and mineralogy?

A. I have had the instruction that was given in the ordinary line of engineering.

Q. Are you a graduate in mining engineering?

A. Yes, sir.

Q. What school?

A. University of Washington.

Q. Did you make an examination of the Borean pit? A. I did.

Q. And the open cut shown in the pit?

A. I did. [943]

Q. What did you find there in the way of open diggings in the Borean pit?

A. It appears to be a large placer wash and on the south side, on the southeast side of that pit, there is apparently a trench or open cut dug in the wash. The boulders are piled up in the wall alongside of this to keep it from caving in apparently and in the bottom of that.

Q. Did you find any evidence there of recent excavations?

A. There was a hole I saw this morning that has

(Testimony of R. G. Whalen.)

been dug since I was there last time.

Q. What, in your opinion, is the condition of the surface of that ground as to being in place or not?

A. In my opinion that is slide rock.

Q. How deep is the slide rock?

A. From the condition of the ground there and from the out-crops further down I should judge it would be about twenty feet deep there.

Q. Did you examine the bedrock where it shows in Snowslide Gulch and on the creek? A. I did.

Q. How does the character of the bedrock at those points compare with the pieces of rock that protruded from the surface in the neighborhood of the Borean pit?

A. It is entirely different from the boulders in the pit in the vicinity of this slide, with the exception of a few small pieces of loose rock that are somewhat similar.

Q. I am speaking of the boulders that project from the surface and are apparently in a slide condition.

A. It is entirely different from them. [944]

Cross-examination.

(By Judge WINN.)

* * * * * * * *

Q. How long have you been in the service of the Alaska-Treadwell Gold Mining Company?

A. Since 1906.

Q. You have also done work for the Alaska-Juneau Company, the defendant in this case?

A. Have done a little work last year—in 1910.

* * *

(Testimony of R. G. Whalen.)

Q. You say you went up and examined the Borean pit this morning? A. We did.

Q. Who went with you?

A. Mr. Jones and Mr. Lindsey.

Q. Mr. Jones is the assistant superintendent of the defendant company and Mr. Lindsey is one of the engineers?

A. Mr. Jones is with the Alaska-Juneau and Mr. Lindsey is in my office.

Q. What did you say you examined? Did you go up to the pit, as far as the upper end of it—that is, as far as it extends up on the Parish No. 1?

A. I went in through the bottom and out through the point where the Parish line crosses.

Q. Where the end line of the two Parishes crosses?

A. Yes, sir.

Q. You didn't go up any further?

A. I have been up there.

Q. Where was it with reference to this common end line of the two parish claims at which you saw nothing but slide? A. On that end line.

Q. Then how far did you investigate down along what virtually appeared to be nearly the center of the Parish No. 2 to see [945] how far that slide extended?

A. I have been along the brow of the creek and I have been through the underbrush there.

Q. Can you indicate on this map where it was you first ascertained this morning there was slide?

A. The slide is in the bottom of the Borean pit it-

(Testimony of R. G. Whalen.)

self—the slide starts just above the upper word bedrock.

Q. From the upper word “bedrock” written on this plat, and you say all of that clear up to the common end line of the two Parish claims is slide?

A. Yes, sir, it is slide.

Q. Did you do any excavating there this morning?

A. No, sir; it was not necessary.

Q. It has been cleaned out lately?

A. There has been three pits dug, I think. small pits.

Q. To what depth above the ordinary surface of that open cut or what we have referred to as the Borean pit?

A. I would say that the greatest depth would have been about two feet, the actual depth.

Q. You just then looked upon the Borean pit as you found it and didn’t attempt to move any of the bottom of the pit or the open cut to ascertain anything? A. No, sir.

Q. Now, near the words marked “bedrock,” the parts that were testified to by Mr. Stewart yesterday, you did find bedrock, did you?

A. I believe I did. I think it is correctly shown on that map.

Q. Mr. Stewart was not with you this morning?

A. He was not.

Q. From those points how far did you go on down towards the [946] creek searching for bedrock?

A. I didn’t go down that way this morning.

Q. You know all along near the bank of the creek—

(Testimony of R. G. Whalen.)

well, almost clear across the Parish #2 lode claim—that the bedrock is exposed there?

A. The bedrock is exposed along the flume—I saw that. I thought you meant on the bench.

Q. Below your flume and the creek, what distance is it? A. Forty or fifty feet.

Q. If you found bedrock along your flume, why in all probabilities it extended on down to the creek?

A. Yes, sir.

Q. Did you ever go over Snowslide Gulch approximately at the point that Stewart indicated on this map he found bedrock? Have you ever been there, on Snowslide Gulch? A. Yes, sir.

Q. The bedrock that you found there on that part of Snowslide Gulch is just about in line with the bedrock discoveries from Gold Creek, on up through the discoveries you made in the Borean pit, clear on up Snowslide Gulch, about in line?

A. I think if you draw a line through those points and marked bedrock in the Borean Pit, it would hit bedrock in both the other places, at a good many points.

Q. When you made your affidavit resisting the application for a restraining order in Case #803-A of this court, you measured from this Corner No. 5 of the Idaho the way you have already testified about on up to the stake where the Mulligan notice was posted?

A. Yes, sir.

Q. And then, you said that that notice as posted was 78 feet below the lower side line of the Lotta?
[947]

(Testimony of R. G. Whalen.)

A. Yes, sir.

Q. That Mulligan notice was posted up the creek about how far from where your present dam is?

A. About 150 feet, approximately.

Q. Then, according to your affidavit, you located the Lotta at that time as being 150 feet plus 78 feet up the creek from where your dam is put in?

A. Yes. I can indicate on that chart if you wish.

Q. Your company, then, or the defendant company, was contemplating putting in a dam up where Mulligan's notice was at that time, wasn't it?

A. I don't know.

Q. What time was it that you went up there to make that measurement, do you know?

A. Relatively I know it. It was about a day before the trial started on the first injunction suit, maybe two days. I don't know.

Q. Your affidavit is dated the first of September. Now, when did you go up there with relation to the time you signed the affidavit, do you remember?

A. About two days before that.

Q. Then that would be the latter part of August—that is, the 28th or 29th of August? A. Yes, sir.

Q. Did you see any work that had been done up there where the Mulligan notice was, looking toward the diversion of water from Gold Creek?

A. I saw the troughs.

Q. There were some troughs in there?

A. Yes, sir.

Q. At that time you had not undertaken to build a dam down [948] where it is now constructed?

(Testimony of R. G. Whalen.)

A. I didn't undertake to build any dam at all.

Q. You went up the creek—did you see anything in there looking like a dam where the dam is now constructed?

A. I didn't notice it there. I was simply running a line up the creek. I didn't look.

* * * * *

Witness excused.

[Testimony of W. H. Case, for Defendant.]

W. H. CASE, called and sworn as a witness for the defendant.

(By Mr. SHACKLEFORD.)

Q. You are a photographer in Juneau?

A. Yes, sir.

Q. Referring to pictures marked 12, 13, 14, 15 and 16, I will ask you to examine same and state who took those pictures.

A. I have examined these—these are pictures I made.

Q. At whose request were they taken?

A. Mr. Kinzie's.

Q. About what times?

A. I couldn't give you the dates.

Q. Mr. Kinzie accompanied you at the time they were taken? A. Yes, sir.

Q. To refresh your recollection, I will ask you if they were not taken somewhere about the time of these arrests?

A. Yes; it was about the time of the first trouble.

Q. They are correct representations of the things

(Testimony of W. H. Case.)

shown thereon? A. Yes, sir.

Q. And they are taken in the vicinity of the Alaska-Juneau flume and the Ebner property on Gold Creek? A. Yes, sir.

Witness excused. [949]

[Testimony of Lloyd Winter, for Defendant.]

LLOYD WINTER, called as a witness for the defense:

(By Mr. SHACKLEFORD.)

Q. You are a photographer and member of the firm of Winter & Pond? A. Yes, sir.

Q. And your business is in Juneau, Alaska?

A. Yes, sir.

Q. How long have you lived here?

A. I came here in the spring of '93.

Q. I will ask you if you are acquainted with the general features of Gold Creek canyon below the Ebner mill or falls of Gold Creek?

A. In a general way.

Q. Do you remember a cavity, probably twice the size of one of those desks, that looks like an old boulder, an excavation about the shape of a boulder, in the falls below the Ebner mill? Or by the falls?

A. I think so.

Q. How long has that been there?

A. I couldn't tell you.

Q. Has it been visible there during the time you have been here? A. Yes, sir.

Q. Ordinarily visible,—at all ordinary stages of the creek? A. I don't want to say that.

(Testimony of Lloyd Winter.)

Q. You have seen it generally during the summer months?

A. It has been my business to go up there several times during the year since I have been here.

Q. It is a spot that is noticeable as you go up there?

A. Quite noticeable; yes. [950]

Q. Was it there when you first came here?

A. It was.

Q. I hand you a picture marked Defendant's Exhibit 41 and ask you what it is.

A. A photograph made by myself in the summer of 1894, possibly 1893.

Q. Marked Coulter mill?

A. Coulter's quartz-mill, near Juneau, Alaska.

Q. I call your attention to a place there where you have marked an arrow and ask you to explain to the Court what that is.

A. It identifies the cavity in the cliff of rocks, abreast of the waterfall.

Q. And that is a correct representation, taken at the time mentioned by you?

A. Just as it was when this photograph was made.

Q. Do you know what time of the year that photograph was taken?

A. It was during the summer months.

(The photograph—exhibit 41—is admitted in evidence.)

(By Judge WINN.)

Q. What is that point he called your attention to—a rock? A. No, a cavity—looks like a tunnel.

Q. Is it a tunnel?

(Testimony of Lloyd Winter.)

A. I don't know what they call it.

Q. You can't tell from looking at the photograph what caused that dark spot where the arrow is?

A. It is a cavity.

Q. Did you take this picture? A. Yes, sir.

Q. In what year? [951]

A. Either in the summer of 1893 or 4.

Q. You don't remember whether it was a tunnel there or what it was—whether it was the workings of a mine or anything of that kind?

A. It has the resemblance to a tunnel; it is a sort of cavity there, and it may be done by hand or washed by the water—I can't say.

Witness excused.

**[Testimony of R. G. Whalen, for Defendant
(Recalled—Further Cross-examination).]**

Mr. WHALEN, recalled for further cross-examination:

(By Judge WINN.)

In the affidavit you made resisting the application for a temporary restraining order in 803-A, you also state in that: Affiant further says that they and each of them are well acquainted with the ground embraced in the Oregon and Wyoming lode mining claims as the same are delineated upon the plat attached to the defendant's answer—the plat you mean is Plaintiff's Exhibit "II"? A. I think so.

Q. Up to that time, had you ever surveyed either the Wyoming or the Oregon, or did you simply state that you made a drawing of that from another draw-

(Testimony of R. G. Whalen.)

ing in your office that showed the location of it on the map?

A. I stated I was familiar with the ground in that vicinity.

Q. You stated you were acquainted with the ground embraced within the Oregon and Wyoming lode claims? A. Yes, sir.

Q. Had you ever gone over the Oregon and Wyoming lode claims prior to that or did you just gain your information from [952] what you gained in the office?

A. I gained the information from the location of the claims on the ground from the material we had in the office.

Q. Up to those lawsuits being brought, you had never been over what was claimed to be the Wyoming or Oregon lode claims?

A. I had never been all over them; no. I had seen the ground and was familiar with it.

Q. You hadn't made any examination for the stakes or made any survey to see where the boundary lines were on the ground? A. No, sir.

(The original affidavit of Mr. Whalen and others in 803-A is admitted in evidence as plaintiff's Exhibit "LL.")

Q. Up to the time of the hearing in that case or the commencement of those lawsuits, and prior to, say, the middle of July, 1910, you had never had any occasion to go upon the ground that is termed the Oregon or Wyoming claim, had you?

A. Not in the way of duty, no. I had been there

(Testimony of R. G. Whalen.)

on a trip, that is all; not in the line of doing any work.

Q. When did you make a trip to the Wyoming and Oregon lode claims, say, prior to July, 1910, prior to Datson making his location of the Oregon?

A. I think I had been there a year or so before that—not on any work at all. I have a habit of making trips around on Sundays.

Q. You had not been there on any business connected with either the Oregon or Wyoming claims?

A. No, sir.

Q. You did testify that you have been in the service of the Treadwell Company for two years?

A. Since 1906.

Witness excused. [953]

[Testimony of W. R. Lindsey, for Defendant.]

W. R. LINDSEY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. You live in Treadwell? A. Yes, sir.

Q. What is your occupation? A. Surveyor.

Q. How long have you been in this mining district as a surveyor?

A. As a surveyor, two years ago this summer is the first time.

Q. I will ask you if you were doing any work last summer in the vicinity of the Alaska-Juneau flume and dam below the Ebner Mining Company mill on Gold Creek? A. Yes, sir.

Q. Were you employed to go up there, instructed

(Testimony of W. R. Lindsey.)

to go up there and locate a flume grade?

A. I was.

Q. When did you do this?

A. I believe the first survey was made on September 12th for the flume.

Q. You located both ends of the grade?

A. Yes, sir.

Q. Is that the present grade?

A. No; it was about 16 feet, I believe, above the present grade.

Q. That is the height of the original tunnel?

A. Yes, sir.

Q. When did you locate the second grade?

A. I think it was about a week afterwards approximately. I don't know exactly.

Q. I will ask you to state to the Court generally the nature of that ground with reference to the strip of ground occupied [954] by the present flume grade and by the one which was originally contemplated—that is, vertically, the difference.

A. It wouldn't throw the flume more than ten feet either way,—that is, 16 feet vertically would throw it that much.

Q. What portion of the flume which is cut out of the cliff below the Alaska-Juneau Company's present dam—what, if anything, is the situation at that particular point?

A. Well, it is almost perpendicular at most of that place—a very precipitous slope all along.

Q. Some of that cliff is a little more than perpendicular, overhanging? A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. So that with reference to that particular portion of the grade which had to be blasted out, what if any change is there in the location of the flume except as to height?

A. Well, there would be probably no change—a few feet, maybe.

Q. Did you survey the Canyon lode claim on the ground?

A. I made a preliminary survey of it; yes, sir.

Q. For the purpose of locating the corners?

A. Yes, sir.

Q. Just state when that was done.

A. I don't remember the exact date. It was on the date of location.

Q. The same date the location was made?

A. Yes, sir.

Q. You ran the courses and distances and established the corners? A. Yes, sir.

Q. Was the claim staked at that time?

A. Yes, sir. [955]

Q. Do you know where the discovery was on the Canyon claim?

A. Yes, sir, it was approximately 30 feet above the Alaska-Juneau dam.

Q. All of the corners are marked?

A. I couldn't get to all of the corners and I put in witness corners—at two of the corners—but they are all marked on the ground.

Q. All of the corners are marked? A. Yes, sir.

Q. You went up to the Borean pit this morning?

A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. State to the Court what you did up there with reference to locating bedrock and also with reference to locating the rock which appears in the vicinity of the Borean pit there, the large boulders.

Objected to as incompetent, irrelevant and immaterial and no proper foundation laid.

Q. You have taken a course in engineering?

A. Yes, sir.

Q. Mining and engineering?

A. Yes, sir.

Q. What school are you a graduate of?

A. University of Washington.

Q. And how long since you graduated?

A. Two years.

Q. You have been engaged in field work ever since?

A. Yes, sir.

Q. You are one of the regular staff of the Alaska Treadwell Company's office? A. Yes, sir. [956]

Q. Proceed.

A. I started up in company with Whalen and Jones and went up the Alaska-Juneau flume part of the way and found bedrock some place along the creek, and then went over the hill to the pit, and on the way we found some bedrock below the pit a ways—I don't know just how far it was—and went up to the pit and took samples of the rock there and tried to find bedrock, but we couldn't find any indications of it. From there we went on up through the pit and up to the sidehill where we could find bedrock. We found rock that looked the same as the boulder in the pit, we found that way up on the sidehill, and below

(Testimony of W. R. Lindsey.)

that we found bedrock that compared with the bedrock in the pit and also the bedrock in Snowslide Creek, but it is different from the boulders in the pit.

Q. Did you bring a sample of the rock you found up on the sidehill?

A. We brought samples down—Mr. Jones has the samples of the rock.

Cross-examination.

(By Judge WINN.)

Q. Whom did you have a conversation with before you went up there this morning?

A. Whalen and Jones.

Q. Did they state what you were going up there for?

A. We were going up there to see what we could find in the pit and see if we could find any material that compared with those boulders in the pit.

Q. Did *and* Whalen and Jones talk over the matter when you were up there on the ground? [957]

A. We talked over the different kinds of rock we found.

Q. You all agreed upon the same kind?

A. Yes, sir.

Q. You knew that you were going to be called upon here to testify concerning it before you went up there?

A. I thought probably I would; I didn't know.

Q. What experience have you had with mining up on Gold Creek?

A. I have been all over the section. I never done any actual mining, but surveyed over there and ex-

(Testimony of W. R. Lindsey.)

amined the rock in many different places.

Q. You have done surface ground surveying?

A. I have mined some.

Q. On other places on Gold Creek?

A. Not on Gold Creek.

Q. You have never done any mining on Gold Creek or Silver Bow Basin? A. No.

Q. All you have done up there has been surface ground surveying?

A. I have examined the rock in place in a good many different places.

Q. When did you examine the rock in place and for what purpose?

A. Anyone interested in geology would examine it almost any time they were around there, and I have been over that section a good many different times during the last two years.

Q. You were so interested in geology that you went up there and studied the formation up Gold Creek and Snowslide Gulch on how far up?

A. I have been all the way up to the Perseverance mill and above that.

Q. You have gone down the bed of the creek and up on to the properties in dispute before this morning to examine [958] the formation?

A. Yes, sir.

Q. When did you go over there to examine that formation?

A. The first time I was in that section was, I believe, a year ago.

Q. What was your occasion to examine the surface

(Testimony of W. R. Lindsey.)

up there a year ago?

A. It was the time the geologist was up there, the expert, and I had been talking with him for some time and went over to see what it looked like.

Q. What part of Gold Creek did you examine then? A. The section around the Oregon claim.

Q. Did you know the Oregon claim existed at that time, a year ago?

A. Yes; it is a little less than a year ago.

Q. You mean the Datson Oregon claim?

A. I heard of another Oregon claim located before that.

Q. Your location is dated October 8, 1910, that you made the location of the Canyon claim. Did you last year make any other locations for the defendant company up or down Gold Creek from where you located the Canyon claim?

A. I think I made three other locations.

Q. What were they? A. The Bear claims.

Q. Where are they?

A. They are all below the Alaska-Juneau dam, on the same side of the creek.

Q. Below the Alaska-Juneau dam and on the right-hand side of the creek as you go up?

A. Yes, sir. [959]

Q. I will ask you if you did not know at the time you located the Bear lode claims that they were being located for the purpose of obtaining a right of way for the defendant company down Gastineau Channel.

Objected to as not cross-examination—incompetent, irrelevant and immaterial.

(Testimony of W. R. Lindsey.)

Objection sustained. Plaintiff allowed an exception.

Q. I hand you a certified copy of a location notice, offered in evidence in this case by the defendant company, which refers to the canyon lode claim. Is that the location notice you claim you took up the Canyon lode claim under? A. Yes, sir.

Q. I wish you would come over here to this exhibit and trace out with this ruler about where you intended that the exterior boundary lines of that claim *should*? A. It is shown by those red lines.

Q. You didn't get the end lines parallel, did you?

A. Part of the end lines were parallel, they were run out with a compass and chain. It is a bad country in there.

Q. When you say you made a preliminary survey to locate that claim, you don't mean that you made an accurate survey of it?

A. Not very accurate; no.

Q. You didn't have a transit?

A. I had a compass and chain. I didn't have a transit.

Q. You considered the compass was good enough to locate the claim by? A. Yes, sir.

Q. What work had been done in and about the Lotta claim prior to the time you made this location to ascertain where the boundary lines of the Lotta claim were?

A. I was with Whalen when he ran the first line up Gold Creek [960] as he testified to.

Q. You signed that affidavit with Whalen, didn't

(Testimony of W. R. Lindsey.)

you? A. Yes, sir.

Q. The same affidavit I was questioning Whalen about this morning,—your name is attached to it?

A. Yes, sir.

Q. You are the same Lindsay mentioned in that?

A. Yes, sir.

Q. In order to ascertain where the Lotta claim was prior to your making the location of the Canyon claim, you had done nothing except to run this traverse line from Corner #5 of the Idaho up just as described by Whalen? A. Yes, sir.

Q. You heard Whalen state that the water location notice of Mulligan was about 150 feet up Gold Creek from your present dam and then the location notice was 78 feet below the lower side line of the Lotta,—you heard that? A. Yes, sir.

Q. You helped him ascertain those facts in running that line up there? A. Yes, sir.

Q. In this location notice you say—beginning at the notice situated on the left bank of Gold Creek, about 50 feet up the stream from the lower Alaska-Juneau dam—that line that you located about 50 feet up was the lode line of your location of the Canyon claim, was it not? A. Yes, sir.

Q. Then, you took 300 feet above there and according to that located the lower side line of the Lotta claim 300 feet above your lode line, did you not?

A. I did not; no, sir. [961]

* * * * *

Q. You meant by your notice that the Lotta claim

(Testimony of W. R. Lindsey.)

bounded your claim on the northeasterly side line, did you not?

A. I meant that the Lotta lode, as far as I could tell, lay very close to the side line. I didn't know exactly where it was. * * *

Q. You stated in that affidavit you made in 803—that you were well acquainted with the ground in the Wyoming and the Oregon lode claims. What Oregon claim did you have reference to when you made that affidavit—did you have reference to the Corbus location or the Datson location?

A. I believe they both cover practically the same ground.

Q. At the time you made that affidavit did you know that Datson had made a location of a claim that he called the Oregon? A. Yes, sir.

Q. Do you know which one of those Oregon claims you refer to—you call it the Oregon claim?

A. That is all I called it.

Q. Do you refer to the Datson or the Corbus location?

A. It didn't make any difference as long as it is the same ground—it is the Oregon claim.

Q. Before we got into these lawsuits, had you had anything to do with the Oregon claim and the Wyoming claim? A. No, sir.

Q. You didn't know there was any such claim in existence prior to that time? A. No, sir.

Q. Then, all you know about the Oregon claim and the Wyoming claim when you refer to them in your affidavit is from some knowledge you gained out of

(Testimony of W. R. Lindsey.)

the office of the [962] Alaska-Treadwell Gold Mining Company?

A. I knew where the stake of the Idaho was and I knew from the surveys where all these claims should lay.

Q. You did not know until this litigation came up that the defendant company ever claimed to own any such a mining claim on Gold Creek as the Oregon and Wyoming?

A. I may have known it. I don't know when I first learned of the Oregon and Wyoming. They have been on record there over in the office for some time.

Q. How often have you ever been called upon to examine a mining claim to ascertain anything about bedrock and especially any mining claim on Gold Creek? I will confine it to Gold Creek entirely.

A. I have examined a good many different kinds of rock on Gold Creek.

Q. I mean to ascertain in regard to any particular mining claim as to how deep it was down to bedrock, etc. How often have you been called upon to examine into a matter of that kind on anything on Gold Creek? That is the first time, is it not?

A. In connection with the Canyon and Oregon, I went over all these and examined them.

Q. You made a discovery on the Canyon claim, did you, at a distance of about 50 feet above the dam. What was the nature of your discovery there?

A. There were stringers of quartz with mineral in it.

(Testimony of W. R. Lindsey.)

Q. Did you locate it according to the strike of the country there? A. Yes, approximately.

Q. As near as you could? A. Yes, sir. [963]

Q. And you found rock in place there?

A. Yes, sir.

Q. It is not any trouble to find rock in place anywhere down Gold Creek from where you made your discovery clear down across—well, for six or seven hundred feet? A. No, sir.

Q. Now, that is a fact—for several hundred feet down the creek from the dam, you can go along Gold Creek and just up about the flume, between the flume-line of the defendant company and the creek, you can find bedrock and rock in place?

A. Yes, sir.

Q. What place did you make an examination first in the Borean pit to ascertain where the bedrock was? Refer to the exhibit there.

A. We examined the bedrock all the way up this direction and found bedrock on the flume and somewhere up in here and all the way through the pit.

Q. Did you go clear up to the head of the pit?

A. Yes, we went out of the pit at the head.

Q. And where in that pit do you claim that the slide commenced in the bedrock?

A. The last place the bedrock is exposed is down here some place. Above that it is all slide rock.

Q. You didn't do any excavating up there this morning? A. No, sir.

Q. You just went up to examine things as they stood there on the ground? A. Yes, sir.

(Testimony of W. R. Lindsey.)

Q. You say you went out of the Borean pit and went up above it there on the Parish #1 claim?

A. Yes. [964]

Q. Did you find any bedrock up there?

A. We found bedrock up on the hill some place. I don't know how far up it was.

Q. Approximately, how far up from the Borean pit?

A. Approximately, I should say nine hundred or a thousand feet.

Q. You went up that high this morning?

A. Yes, sir.

Q. How is the strike of the bedrock you found up on the hill there compared with that you found down on the Parish #2? A. Approximately parallel.

Q. Did you go over near Snowslide Gulch—in Snowslide Gulch? A. Yes, sir.

Q. About what point on this exhibit No. 71 did you go over to Snowslide Gulch this morning?

A. Some place in here, I should say.

Q. Some place about where the word "Gulch" is written on the Colorado claim, as indicated on this exhibit 71—did you go any other place on Snowslide Gulch?

A. We came down across here and came down Snowslide Gulch and down this way.

Q. And what did you find in Snowslide Gulch about where that word "Gulch" is—find any bedrock there?

A. We found bedrock in one place; yes, sir.

Q. How is the strike of that with the bedrock you

(Testimony of W. R. Lindsey.)

found below there?

A. It is approximately parallel to it.

Q. Did you go down to Gold Creek?

A. Yes, sir.

Q. Did you go down to Gold Creek this morning to see if you could find any rock in place, bedrock, down between your [965] flume—the defendant company's flume and the creek?

A. I see the bedrock in place a good many places when I was there before.

Q. The bedrock, now, that you speak of that you found at those places, do you mean it was mineralized rock?

A. In places it assayed a little bit and in some places it did not.

Q. Do you remember just where those places were?

A. No, I don't remember. Up on the hill, I remember.

Q. It shows it is mineralized?

A. It shows it is mineralized; yes, sir.

Q. How about Snowslide Gulch?

A. I don't believe I found any there.

Q. You made no test about the mineralization of it except an examination of the rock?

A. That is all; yes, sir.

Witness excused. [966]

[Testimony of George C. Jones, for Defendant.]

GEORGE C. JONES, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. Where do you make your headquarters?

A. At the present time up at the Alaska-Juneau mine.

Q. You are in charge of that property on the ground? A. I am foreman.

Q. And have been for how long?

A. The last year.

Q. You were in charge of that property last year when the dispute arose between the parties on Gold Creek between the Snowslide Gulch and the Ebner Mill? A. I was.

Q. I will ask you to state if you have made any examination of the Borean pit and the surrounding country for the purpose of determining the character of the large rock found on the edge of that pit or in the pit and their probable original source?

Judge WINN.—We object to that. No foundation laid, and it is incompetent, irrelevant and immaterial.

By the COURT.—How long have you been engaged in the mining business?

A. About four years.

Objection overruled. Plaintiff allowed an exception.

Q. We went over the ground this morning and from all the evidence we could get—

(Testimony of George C. Jones.)

Judge WINN.—We object to that.

Q. You have taken a mining course?

A. Yes, sir.

Q. A graduate of what school?

A. University of California. [967]

Q. How long have you been out of school?

A. Four years.

Q. Have you been in active work of mining ever since? A. Ever since; yes, sir.

Q. Before you state your conclusions, tell what you did.

A. We went along the flume, from where the old dump from the Borean pit comes over. We followed that approximately and went right into the mouth of this open pit or wash, or whatever it is, and found some bedrock—the same as the rock around there.

Q. The same as the rock developed by the cut in the creek?

A. Yes. We found that just about where it is indicated here, where bedrock is written.

Q. What is the character of that rock?

A. It is a schist.

Q. Describe to the Court the prominent rock, if any, you found in the Borean pit.

A. From where we found this bedrock we walk up, I should say, about 70 feet—60 or 70 feet—to where we found the big boulders, what appeared to be diorite. In most places it was a big boulder and the rest was small boulders; they are much shattered and it is massive, save you couldn't tell anything

(Testimony of George C. Jones.)

about any strike or dip to it.

Q. Did it bear any resemblance whatever to the schist exposed in the bed of the creek?

A. Not at all.

Q. Did you ever find any other kind of rock of any massive size or of unbroken loose character than that in the pit?

A. No, we found all sorts of broken rock in the pit.

Q. I am speaking of rock of any size? [968]

A. Some two or three pieces, some greenstone—nothing to amount to anything. From there we went up to the top of this excavation, examined all the rock we could find there, all the exposed rock, all apparently mixed up, had some greenstone, some of this decomposed *metagabbro* and decomposed diorite.

Q. What is the character of that ground after you cross the lower rim of the pit, from there up to the end of the pit and within a radius of 50 feet from the border,—what is the character of that ground?

A. It is a mixture of a little bit of everything.

Q. I don't mean the character of the rock, but the character of the ground with reference to its being rock in place.

A. It is loose rock, as far as we could see.

Q. Tell us what you did with reference to the ground further up the hill.

A. From there we went right to the bottom of the cliff—it is probably 900 feet from the cliff—and we took a sample of the rock up there, which we found to be just the same as these boulders as far as we

(Testimony of George C. Jones.)

could tell—this diorite and *metagabbro*, and also up there just on the snow line we found some more of this schist, this green schist, chloritic schist.

Q. That is before you strike the cliffs with this massive rock?

A. Yes, but there was so much snow around there we couldn't really find the contact, where it apparently intersected.

Q. Tell the Court where you took the samples from.

A. We took one sample just where it is exposed at the flume.

Q. I mean samples on the sidehill, 900 feet up?

A. There was one sample we took of the *metagabbro* and we took [969] one sample of this schist.

Q. The sample you took of the *metagabbro*, state its situation with reference to being in place.

A. It is directly above the Borean pit, as they call it—we went straight up there,—snowslides had to come down that way.

Q. You took it out of the cliff?

A. We took it right out of the cliff.

Q. Have you that with you?

A. Yes, sir; we have several of them. Mr. Lindsey had two or three.

Q. This is a sample of the rock you got out of the cliff? A. Yes, sir.

It is offered in evidence and admitted as Defendant's Exhibit 42.

(Testimony of George C. Jones.)

Afternoon Session.

Q. Did you take any observations in the vicinity of the Borean pit to ascertain the depth of that slide matter on the hillside as near as you could estimate it from the position of that boulder?

A. I should judge it was between 50 and 100 feet, just where the boulder is.

Q. It sticks up that high from the lowest point in the pit?

A. No; that is the depth of the slide where the lower part of the bolder is exposed.

Q. Did you take any samples of bedrock in the vicinity of Gold Creek?

A. Yes, sir; that piece was taken just above the flume.

Q. This piece was taken just above the Alaska-Juneau flume?

A. Just above the flume, near the place where the tailings from the Borean pit are found. [970]

The rock is admitted as Defendant's Exhibit 43.

Q. Did you take any samples of bedrock anywhere else?

A. Yes; we took one sample of bedrock exposed at the lower end of the pit where the flume used to be.

Q. At the floor of the rim of the pit? A. Yes.

(The rock is admitted as Defendant's Exhibit 44.)

Q. Did you take samples of bedrock anywhere else?

A. Yes; I took samples of the dump of that tunnel which is approximately 300 feet above the Borean pit, to the left of the pit.

(Testimony of George C. Jones.)

Q. The dump of the tunnel?

A. Yes, there is a tunnel. I believe it is on the Royal claim.

Q. Have you a sample of that? A. I have.

Q. Does that correspond with the general character of the rock all around that tunnel?

A. It does.

(The rock is admitted as exhibit 45.)

Q. Did you take any other samples?

A. Yes; the next sample, Number 4, was taken to the right, just a little bit below the Borean pit, just on that point on the other side of Snowslide,—on the left-hand side of Snowslide and on the right-hand side of the Borean pit.

Q. On the drainage of Snowslide Creek?

A. Yes, as low down as we could get it in the snow.

Q. That corresponds to the general character of the rock in that vicinity that is in place?

A. Yes, sir. (The rock is admitted as exhibit 46.)

Q. Did you take any other sample? [971]

A. Yes; that is taken right at the foot of the cliff at practically the snow line there.

Q. That is, it is taken from the foot of the cliff from which you took the first sample of metagabbro?

A. Yes, sir.

Q. This corresponds with the general character of the rock beneath the cliff?

A. It corresponds to the rest of this schist around there, the bedrock.

Q. How far is this from the cliff which you described as about 900 feet north of the Borean pit?

(Testimony of George C. Jones.)

A. It is just at the foot of that.

(The rock is admitted as exhibit 47.)

Q. Did you take a sample off the big boulder too?

A. Yes, sir—here it is.

By the COURT.—That is the big boulder in the pit?

A. Yes, sir.

Q. To the left of the pit as you look up the hill?

A. Yes, sir.

(The rock is admitted as exhibit 48.)

Q. Now, from the cliff on down to Gold Creek where bedrock is exposed by the action of the creek, I understand you to say that the country is generally covered with slide matter?

A. Yes, close to the top, there is a lot of snow there; we couldn't see, after probably 150 feet,—there is snow there.

Q. From the snow on down? A. Yes.

Q. You are acquainted with the rock formation in this mineral belt from your experience?

A. I am; yes.

Q. The direction you took from the Borean pit up the hill, [972] what is the direction of the compass, what is the direction of that?

A. I should say it was northeast by east—we would call it northeast.

Cross-examination.

(By Judge WINN.)

Q. How long do you say you have been in the mining business in Alaska? A. A year and a half.

Q. When were you called upon to go up and ex-

(Testimony of George C. Jones.)

amine this formation so you could give this testimony? A. I was told to go last year.

Q. When did you make your examination?

A. This morning.

Q. By whom were you sent up there?

A. Mr. Kinzie.

Q. Did he tell you what he wanted you to do?

A. He did.

Q. You went up there and did what he told you to do? A. I did.

Q. Have you ever read Mr. Spencer's report, the Spencer that belonged to the United States Geological Survey, of what is called the Juneau gold belt?

A. I have.

Q. Did you ever read Mr. Wright's report also, which was made later on, some years after Spencer's?

A. I think I have. I am not certain, though.

Q. I will ask you if you have read those reports sufficiently to testify to the court as to what particular mineral-bearing formations in this Juneau gold belt and especially including the Perseverance, Alaska-Juneau and the Ebner property—as to what sort of rock in place is the mineral-bearing [973] rock?

A. I would go on my own experience—his write-up on the Alaska-Juneau was very meagre.

Q. Have you read both Spencer's and Wright's reports?

A. I am certain I read Spencer's—I don't know whether it was Wright's report, the other I read, or not.

(Testimony of George C. Jones.)

Q. Do you remember whether or not Wright's report corroborates that of Spencer?

A. The reports I read did corroborate him.

Q. If you have read those and taken in connection with your experience that you have had in mining in the Juneau gold belt including the Ebner property, the Alaska-Perseverance and in the Alaska-Juneau, I would ask you what sort of rock in place and what sort of a formation is it they describe there as being the mineral-bearing rock, both Spencer and Wright?

A. I have never been in the Perseverance but from what I have read, that strip of country in there, the mineral is found in the black slate.

Q. Altogether? A. I believe so.

Q. What do Spencer and Wright say in regard to whether that is true or not—do you know?

A. I think that is their idea of it, too—at least, that is where I got my information in regard to the Perseverance because I have never been there.

Q. I will ask you if this is not the fact that in Spencer's report, which is also corroborated by Wright's, they state as follows: That in the portion of the Alaska gold belt or Juneau gold belt which is drained by Gold Creek that Mr. Spencer has recognized four bands, geologically, distinct [974] one from the other, etc. I understand in these reports of Mr. Spencer and Mr. Wright that they only say there is one kind of rock that is the mineral-bearing rock in this Juneau gold belt. Which class of rock or rocks as described by Spencer do these rocks you have offered in evidence in this case belong?

(Testimony of George C. Jones.)

A. The rock from the boulder I should describe as the same as he calls the diurite or which later on has been called the metagabbro.

Q. He states the diurite is a mineralized rock?

A. He does.

Q. Is there mineral in it?

A. I don't think there is at the Perseverance. I don't know.

Q. I am referring, now, particularly to the Ebner property and the Alaska-Juneau, which are more contiguous properties than the Perseverance?

A. That is mineral bearing in the Alaska-Juneau.

Q. And in the Ebner?

A. I think so; in the Ebner.

Q. Now, when you examined what you term a boulder and what all these experts have termed a boulder on behalf of the defendant company in this case, did you see any stratification in that rock of these seams, mineral bearing and mineralized seams that Spencer refers to here?

A. I saw two quartz seams in that boulder.

Q. You didn't bring a piece of the rock down here that showed those two quartz seams?

A. I did not.

Q. Did you compare those quartz seams with the quartz seams further up the hill in Snowslide Gulch to see comparatively [975] which way those seams dipped? A. I did.

Q. How do they dip?

A. They dip towards the north.

Q. They both dip in what you term the boulder

(Testimony of George C. Jones.)

and what you see in Snowslide Gulch—they dip in the same way, don't they? A. Very nearly.

Q. If that is a slide rock or a boulder that has come down off of that hill and altered in that pit, why would those seams and stratifications of that same mineral be dipping very nearly the same as they are in that rock in place out there in Snowslide Gulch—can you explain that?

A. In that case, I should imagine it is just a coincidence.

Q. Do you know the size of that piece of rock you term slide rock or boulder?

A. You couldn't see the absolute size of it.

Q. And you didn't take any pains to go there and make any excavations to find out the size of it?

A. No; we didn't dig down at all.

Q. Neither you nor any of the experts that were with you didn't pretend to get any piece of that that purports to be a mineralized strata or seam—you didn't get any of that part and bring it here?

A. I brought a specimen of the diorite itself.

Q. This specimen that you bring here, is that what is termed in this report of the Juneau gold belt as being one kind of rock *that a* mineral-bearing rock?

A. It is.

Q. You don't want to testify to the Court but what the piece of rock that you took off what you term a boulder is a mineralized [976] piece of rock?

A. I can't say whether that is mineralized or not.

Q. What did you bring it here for?

A. I brought it here to see if it was the same rock

(Testimony of George C. Jones.)

as exposed above.

Q. Is it the same as exposed above?

A. Apparently.

Q. If it is the same as exposed above, would that lead you to believe it was a piece of slide—could there not be a stratification along there, mineral-bearing, that would run up the hill of the same kind as this? A. I should say not.

Q. You have no idea of the size of that piece of rock that you call a boulder?

A. I have a very good idea.

Q. How do you get that idea—from what?

A. From the general shape of it and the way it is lying—from what you can see.

Q. How much of it can you see?

A. There is probably eight or nine feet of it exposed there, and you can see there is loose rock lying underneath it. There are small fragments of this greenstone or schist, whatever they call it, and there is also some broken fragments underneath it.

Q. Couldn't that have been broken off from the regular formation in the excavating and working of that pit? A. It might have been.

Q. If Mr. Kinzie testified that that rock was a very large one, probably as big as this house, this courthouse, I think he made some comparison—I don't know what comparison it was—

The COURT.—He said there was a flat rock there twice as big as this room. [977]

Q. If that is true you want the Court to understand that where you examined those quartz seams,

(Testimony of George C. Jones.)

when they have the same dip that the country that is bared still further on up at Snowslide Gulch has, that it is a mere coincidence—that that piece of rock down there just came off of that big hillside for a half or three-quarters of a mile, rolled down and stopped in that place, stopped with that stratification and with the same dip etc. it has further on up the country there? A. I do.

Q. When you looked under this, what you said was a big boulder, how far underneath that rock could you see that you call a boulder that has this seam in it of quartz?

A. You can see three or four feet; that is as far as you could see.

Q. Does it project out into this wide part of the Borean pit indicated on exhibit 7?

A. It is practically on the side of the pit.

Q. In excavating there or washing out this pit, did that expose any part of the rock or was that rock exposed there before this excavation was made?

A. The side of it was exposed. I imagine you could probably have seen some of the top of it before.

Q. And you saw underneath that some schist or what is described by Mr. Spencer as being a mineralized rock, did you?

A. He doesn't describe the schist as a mineralized rock at all.

Q. What did you find along in there?

A. We found some of this broken diorite, as Mr. Spencer describes it, and little bits of granite, what looked like granite and little bits of this greenstone.

(Testimony of George C. Jones.)

Q. Have you read Mr. Spencer's bulletin Number 225, pertaining to this Juneau gold belt, do you remember?

A. I don't know whether I have read it or not.

Q. I will ask you if it is your opinion that these seams that you saw there, both in the pit and out of the pit, are mineralized, these quartz seams?

A. I should imagine they were.

Q. When you went down further towards the creek you brought some samples in here of what you said was the general formation there. I will hand you the whole bunch of exhibits that Mr. Shackelford identified and will ask you to state to the Court if there is any part of that rock mineral-bearing rock.

A. I should say those two were.

Q. Where did you get those two?

A. One from the boulder and one from the top of the hill.

Q. What do you say about this slate?

A. I should say there was nothing in that.

Q. That is some of the slate formation, schist or slate, and that is what Spencer says is one of the mineral-bearing rocks of the property?

A. Not that schist.

Q. What is the difference between schist and slate?

A. A great deal of difference. The slate has a very prominent cross fracture and the slate existing up here is very much darker in color.

Q. You have been up over the Perseverance Company's mines? A. No, sir.

Q. You have been just across the gully there and

(Testimony of George C. Jones.)

worked in the property of this defendant company for several years?

A. I have not worked up there for several years.
[979]

Q. You know that the slate in this Juneau gold belt is considered about the heaviest mineralized, mineral-bearing rock that is found in it?

A. Some of it—the seams in the slate.

Q. Spencer says that this slate is mineral-bearing rock, don't he, this entire gold belt from Wyndham Bay to Berner's Bay?

A. I believe he says the quartz stringers in this slate.

Q. The same slate that comes from the Alaska-Perseverance Company—some of the slate that comes from the Alaska-Perseverance and those other mines that are mineral bearing rock, the quartz stringers are so fine that you can't see them with the eye?

A. There are some very fine stringers, but my experience is that those very stringers don't carry any value.

Q. This rock that you have offered in evidence in this case is rock that has long been exposed to the weather? A. Yes, some of it is.

Q. That would change the nature of the rock, its long exposure to the weather?

A. It would decompose it to a certain extent.

Q. You didn't take a pick and shovel along and you didn't go down—

A. We didn't dig down any.

(Testimony of George C. Jones.)

Q. You are considerably interested in this case?

A. Yes, sir.

Q. You are the same witness that swore out the warrant for the arrest of Wettrick and others up there last fall on behalf of the defendant company?

A. I am.

Q. What is that long name you called that rock?

A. Metagabbro. [980]

Q. What kind of rock is that? Is that the rock called diorite here by the geologist?

A. I believe so.

Q. What part of this rock that you have introduced in evidence here belongs to that class?

A. The one from the boulder and the one from the top of the hill and one from the cliff.

Q. Why do you call that a boulder?

A. Because I consider it so.

Q. Why do you consider it so?

A. Because I find all around it. I find everywhere where bedrock is exposed. I find it is all this schist and this other stuff is lying on top of it. I sampled all around.

Q. Did you get around to bedrock under this, what you call slide?

A. No, you can see bedrock down below at the mouth of the pit.

Q. How far from where this rock was you call slide? A. It is approximately 70 feet.

Q. (By the COURT.) Seventy feet from the boulder you speak of? A. Yes, sir.

Q. You just went there and went into the pit and

(Testimony of George C. Jones.)

looked at the boulder and looked down at the bottom, and then you walked on down below a piece before you found anything exposed that looked like bed-rock, and that is the examination you made there?

A. Looked at everything there was to look at that would give any indication as to what it was.

Q. Around this rock that you call slide rock in the pit there, could you tell whether there had been any water come in there and wash in and deposit anything on the bottom of the pit? [981]

A. Whether there had been water coming from above? I shouldn't think so—there might be a little but not any amount.

Q. Do you know whether or not that pit was in the same condition it was when Ebner claimed he made a discovery up there or around there some years ago?

A. I do not; no.

Q. And you don't pretend to say that you saw as far down in that pit as Ebner did when he was working up there and claimed what he found as mineral-bearing rock in place? If it is filled in there, six years since that work has been done and it is not left in the same condition, then you didn't see it in the same condition that Ebner saw it?

A. Certainly not.

Q. You could see, I believe, underneath that rock two or three feet where it had been washed out?

A. Something like that.

Q. You didn't go any further back to see what was under there—you didn't pick any more and go back under it?

A. No.

(Testimony of George C. Jones.)

Q. You don't pretend to tell the Court what is back underneath that rock?

A. No, sir, I don't. I didn't try to.

(By Mr. SHACKLEFORD.)

Q. I will hand you a book here and ask you to examine it. It is entitled the Juneau gold belt of Alaska by Arthur C. Spencer and ask you if that is the report to which you refer as having read—the number of it is 287?

A. I think I have read this one. I won't swear to it, but I think so; it looks very much like it.

(The report is identified as Exhibit 49.) [982]

Q. I understand from your cross-examination that the chists introduced in evidence here, being the three samples of bedrock, except the samples taken from the boulder inside the Borean pit and the samples taken from the pit, are not the slates in which the quartz seams of value are found in the Juneau gold belt? A. They are not.

Q. Describe to the Court the slate bands, which are known as the stringer carrying bands of the Juneau gold belt as distinguished from that rock.

A. Well, the slates of the Alaska-Juneau are very dark in color; they have a decided cross-fracture and very finely stratified; they contain quartz stringers which cut probably at an angle of 15 or 20° from the general strike of the slates themselves.

Q. Now, with reference to this greenstone that has been introduced here, I want you to tell the Court is there a stratification of the greenstone? I refer to Exhibit 48. A. No.

(Testimony of George C. Jones.)

Q. There is no such stratification to the stringers in the greenstone? A. No.

Q. And in that boulder referred to there is no stratification? A. No.

Q. Judge Winn has asked you a question as to what Mr. Ebner might have seen in the bottom of the Borean pit before it was washed out. If Mr. Ebner testified that his discovery was made on those high rocks that are still visible to the eye at the edge of the Borean pit, what have you to say whether that is on rock in place or not? [983]

A. I should say that the rock was not in place.
(By Judge WINN.)

Q. Here is a piece of rock identified by Mr. Stewart yesterday—exhibit 31. Do you know where that rock came from?

A. It came from that schist band somewhere.

Q. That is schist you hold in your hand?

A. That is what I call it.

Q. Is that a mineralized piece of rock?

A. I don't think so.

Q. It is your opinion that #31, as identified by Mr. Stewart, is not a mineralized rock?

A. I couldn't say. I wouldn't think it was by looking at it, although there is a little quartz present.

Q. Isn't that a piece of the same kind of slate described up there, with stratifications in it, etc.?

A. That is not slate at all—I wouldn't call it.

Q. You wouldn't call that slate?

A. I would not.

Q. Here is one identified by Stewart—#32. What

(Testimony of George C. Jones.)

do you think of that piece of rock?

A. I would say it is very much the same rock.

Q. Do you think that is mineralized?

A. I shouldn't think so.

Q. Where did that come from—#34?

A. That is what is described as the diorite or the metagabbro.

Q. And which is described as being mineral-bearing rock? A. I think so.

Q. What is this—36?

A. That looks like a piece of granite.

Q. Now, 40—where do you think that came from?
[984]

A. That is diorite—described as diorite.

Q. What is that? A. That is schist again.

Q. This schist is found commonly in this Juneau gold belt on the Ebner property and the Perseverance and over on your property?

A. I have seen a great deal of it.

Q. In what respect does the boulder, so far as stratification is concerned, differ from that same sort of rock that you see out there in Snowslide Gulch—that has a seam in it similar to the seam you saw in this slide rock so-called?

A. There was no stratification; it is not stratified.

Q. Neither one of them?

A. That is the diorite I am referring to.

Q. What about the rock that carries this seam in it in Snowslide Gulch compared with the rock you saw in the pit, so far as stratification is concerned? I am talking about what you call the slide in the

(Testimony of George C. Jones.)

pit, the boulder?

A. The rock in this schist is very well stratified—it is very plain in that schist.

Q. Both in Snowslide Gulch and in this boulder you saw in the pit?

A. No, there is none in that at all.

Q. That you saw in the pit?

A. None in the boulder or in the outcrop in the pit, as you call it.

Q. But there is a stratification, you say, out in the rock which is beyond in Snowslide Gulch, that has seams in it just the same as this?

A. In the schist, but not on top of the hill—there is none on top of the hill. [985]

Q. I am talking about Snowslide Gulch where you saw some rocks with seams of quartz in them just the same as this rock down in the pit, the boulder?

A. I didn't say that.

Q. What did you say?

A. I said there was a seam of quartz in that boulder in the pit.

Q. And then you saw some out in Snowslide Gulch?

A. I said on top of the hill, 90 feet above—it is not in Snowslide at all.

Q. I understood you to say where you went out in Snowslide Gulch, right along in line with this big rock, that you saw in the pit, the boulder, that you went on out there and found rock that had seams of quartz in it, had the same dip, etc., as it did in this rock in the pit?

(Testimony of George C. Jones.)

A. I said that the dip of that seam of quartz in the boulder was approximately the same as the general dip of the schist.

Q. Have you seen any seams out there in rock in place on Snowslide Gulch, right on that line up from Gold Creek, passing through this bedrock that you discovered, up here where Stewart testified to blasting rock out there in Snowslide Gulch that has seams of quartz in it similar to this rock you call a boulder in the pit?

A. Not on that side of Snowslide Gulch where you are referring to. It was directly above, to the left—directly above.

Q. Above this mark, marked bedrock Snowslide Gulch? A. No, it was way to the left of that.

Q. That is, up above the northeast end line of the Colorado lode? A. Yes, sir. [986]

Q. Didn't I put this question to you a while ago—if you didn't go out in Snowslide Gulch and find some rocks that had seams of quartz in them just the same as was in this rock in the pit, and didn't you say you did?

A. Not in Snowslide Gulch. You can't see in Snowslide Gulch at all now.

Q. If Mr. Stewart went up there the other day and found rock in place in Snowslide Gulch, you can see it?

A. You can see one or two little places along the other side of Snowslide Gulch, on the right-hand side of Snowslide Gulch.

Q. You didn't hear Stewart testify yesterday?

(Testimony of George C. Jones.)

Q. You claim way up at the upper end of the Colorado claim, which is the easterly end of this exhibit, you think this big rock came tumbling downhill. How far is it you found that stratification up there?

A. About 900 or 1000 feet.

Q. Then, I understand that is the place you claim this rock came from, and came right side up with care, with the seam just the same as it is on the hill?

A. I didn't say it had the same seam as the rock up the hill at all.

Q. The same dip, etc.?

A. You find those seams of quartz in that diorite in all sorts of directions.

Q. Didn't you say this rock had the same angle, etc., and you thought it was just a coincidence?

A. As the schist.

Witness excused. [987]

[Testimony of Benjamin Bullard, for Defendant.]

BENJAMIN BULLARD, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. In Juneau.

Q. How long have you resided in Juneau?

A. About ten years.

Q. What has been your business since you have been in Juneau? A. Mining.

Q. How long have you followed the business of mining? A. Forty years or more—45 years.

Q. Where did you mine before you came to

(Testimony of Benjamin Bullard.)

Juneau? A. In California and Oregon.

Q. Since you have been mining in Juneau have you located and appropriated any water? A. I have.

Q. You have had some experience in that line in connection with your mining operations?

A. Yes, sir.

Q. Do you know the customs of miners in the Harris mining district and other mining localities in the vicinity of Juneau and Southeastern Alaska with reference to the appropriation of water and the acquisition of water rights in general?

Judge WINN.—We object as incompetent, irrelevant and immaterial. No custom could change the law on the subject.

Objection overruled. Plaintiff allowed an exception.

Judge WINN.—I also object because it is not the best evidence, and is indefinite and uncertain as to time.

By the COURT.—Make it certain as to time.

Q. Do you know the customs of miners in the Harris mining district [988] and the surrounding districts lying in the Juneau gold belt, in the southeastern part of the district of Alaska, with reference to the appropriation of water and the acquisition of water rights at the present time?

Judge WINN.—We object. No foundation laid for this witness to testify.

Objection overruled. Plaintiff allowed an exception.

A. I do.

(Testimony of Benjamin Bullard.)

Q. Do you know the customs of miners in the localities referred to in the last question with reference to the rights appropriators of water have in connection with the construction of ditches and canals and the appurtenances thereto across such mining claims as may be held, claimed or owned by others?

Judge WINN.—We object as incompetent, irrelevant and immaterial and not the best evidence. He is asking for a custom that would change the rule of law adopted by the Courts pertaining to the acquisition of water, and the question is indefinite and uncertain as to time, and indefinite and uncertain as to what sort of mining he is going to testify the water is to be devoted to and used.

By the COURT.—I presume you are referring to unpatented mining claims?

Mr. HELLENTHAL.—Unpatented; yes, sir.

Objection overruled. Plaintiff allowed an exception.

A. I do.

Q. Do you know what is generally referred to as the law of riparian rights, what is meant by that?

Objected to. Sustained.

Q. Do you know what is meant by the term riparian rights? [989]

Judge WINN.—We object as carrying with it a legal effect and legal conclusion. Sustained.

Q. What, if any, rights has the riparian owner under the customs of miners in this mining locality to the use of the waters flowing in running streams by reason of his ownership of the banks, if any?

(Testimony of Benjamin Bullard.)

Objected to as calling for a conclusion of the witness.

Objection overruled. Plaintiff allowed an exception.

A. He has none.

Q. Under the customs of miners in this district, who can acquire a right to the use of waters in running streams?

Judge WINN.—We object. That is regulated by the United States statute and the decisions and rules of the Court, and is calling for a conclusion of law.

Objection overruled. Plaintiff allowed an exception.

A. Any American citizen, that is, a citizen of the United States, or persons who have declared their intention, I suppose, who have use for water.

Q. How can the right to the use of water *be acquired* in running streams be acquired in the locality to which we are now referring under the customs of miners in the Juneau gold belt and in the locality?

Same objection. Objection overruled. Plaintiff excepts.

A. Well, I should say in two ways. By really and actually appropriating the water, or by posting a notice at the point of diversion, in which notice the amount of water intended to be appropriated should be specified in miners' inches or in other ways; that will determine the amount of water that is to be appropriated and the means by which it is to be appropriated and diverted and the place and purpose for which [990] it is to be used.

(Testimony of Benjamin Bullard.)

Q. What is done with that notice with reference to having it recorded under the customs?

Judge WINN.—I object to that because it is incompetent, irrelevant and immaterial and that the rules and decisions of the Courts have established the rule, as well as the statute, having prescribed that this notice may be recorded and any other rule or custom that the witness may have would not prevail in this matter.

Objection overruled. Plaintiff allowed an exception.

A. After posting at the point of diversion, within a reasonable time, as speedily as possible, it should be recorded in the commissioner's office in which the appropriation is made in the district—the commissioner's office in the district in which the appropriation is made.

Q. Under the customs of miners, as you know them in this locality, what is the effect if a notice is not recorded and the rights of others intervene between the time of posting and recording—that is to say, if the notice is not recorded within a reasonable time?

Objected to as not the best evidence.

Objection overruled. Plaintiff allowed an exception.

A. A person who may appropriate by proper notice, etc., if he was more diligent he might acquire such rights. I don't know about that exactly.

Q. The first method of acquiring water rights that you have mentioned is by the actual taking and application of the water without a notice?

(Testimony of Benjamin Bullard.)

A. Yes, sir.

Q. Under that method what has got to be done before the water [991] right lapses under the customs of miners of this district as you know them?

Same objection. Objection overruled. Plaintiff allowed an exception.

A. The actual taking must be done and diverted through some ditch and actually dedicated to use, of sluicing or power or hydraulic purpose or some real practical use, and if so done without any interference by anybody else, then his right is established, fully established. And the other way is by posting a notice and recording it and then diligently and as speedily as possible completing the necessary work to carry out the objects specified in the notice.

Q. What must that be followed by? The posting and recording of the notice, what must that be followed by under the custom.

(It is understood all this testimony goes in under the same objection, which is overruled and plaintiff allowed exception.)

A. By the actual construction of the plant or works indicated by the notice and then the continued use of the water, actual use.

Q. Actual application? A. Yes, sir.

Q. Under the customs of miners in this locality, what right has an appropriator of water or one seeking to appropriate water to apply to a beneficial use to build such ditches as may be necessary to carry out his scheme of diversion and appropriation across unpatented mining claims, quartz or placer, in order

(Testimony of Benjamin Bullard.)

to affect his diversion of water and convey the same to its place of intended use?

Same objection. Objection overruled. Plaintiff excepts.

A. Why, the appropriator has the right to cross such claims, [992] quartz or placer, with suitable ditches or flumes to accomplish the result intended by his appropriation.

Q. Does the right which you have referred to include the construction of ditches, flumes and appurtenances such as wing dams and other necessary dams to get the water into the ditch? A. Yes, sir.

Cross-examination.

(By Judge WINN.)

Q. Have you ever done any mining in this country? A. Yes, sir.

Q. Have you ever run and operated a quartz mine?

A. I have not.

Q. Have you ever had any sort of a quartz-mill?

A. No.

Q. You were a placer miner in this country?

A. I have placer mined a little in this country. I have been employed in mills in this country.

Q. You have a contract with the Treadwell people over here now to sell them a certain water right up Gastineau Channel, have you not—that they have paid you part on and owe you part?

A. They do not.

Q. Didn't you sell them a water right some time ago? A. I did.

Q. The deal is all closed? A. Yes, sir.

(Testimony of Benjamin Bullard.)

Q. The payments are all made? A. Yes, sir.

Q. What are you doing now?

A. Well, I am prospecting. [993]

Q. Where are you prospecting?

A. In this neighborhood, this moment I am not doing anything, haven't for a few days. I intend to go out in the hills shortly and have some prospects in view.

Q. Where have you known of anybody building ditches or flumes over other people's quartz mines in this country to conduct water to mills?

A. I don't know that I have any personal knowledge of such a situation.

Q. You don't know of a single one you can mention—you can't mention a single one, can you? .

A. I don't think I could.

Q. You can't mention a single instance in this Harris mining district or anywhere in Southeastern Alaska where a man had a quartz mining claim, that anybody just at random could cross over with flumes and ditches and convey the water?

A. I don't know of any particular instance of my own knowledge.

Q. In fact, you do know that whenever they have undertaken to do that, they failed in it—when the party who owned the claim resisted it?

A. I have no personal knowledge of such failure either.

Q. How long have you been here?

A. Then years or more.

Q. Where did you find out these matters you have

(Testimony of Benjamin Bullard.)

testified to—what were some of the decisions or books—you didn't know it from experience, did you?

A. I think I did, from experience.

Q. You say you don't know of a single time that anybody has ever taken water across another man's mining claim in Alaska so you couldn't learn it by experience, could you? [994]

A. I think so—by investigation.

Q. You call that experience, do you?

A. Yes, sir; experience.

Q. You call it experience what somebody else has told you? A. Mostly.

Q. Do you know of any man that you have ever talked with that pointed out any specific instance where a man owned a mining claim—do you know of a single instance in Southeastern Alaska where a resistance was made to another party crossing his mining claim with a water-flume or pipe-line—that a crossing was ever made when he was resisted in it?

A. I have no personal knowledge, I don't think, of any particular instance; no.

Q. Do you remember the instance of the Jualpa high line flume when they went across the Ebner property, and he held them up—do you know the result of that case?

A. I now have a recollection, only by hearsay, of some difficulty there between them.

Q. And you remember that the Jualpa Company paid about ten or fifteen thousand dollars to cross there, don't you?

A. I believe that that was my information, that

(Testimony of Benjamin Bullard.)

they had paid for the right of way for some water right or something. I don't know the details of that instance.

Q. From actual experience in Alaska mining, you couldn't have learned what you have testified concerning? A. I think so.

Q. What do you call experience—what somebody else has told you?

A. I call this experience—that when I came to this neighborhood I began to make a study of this subject, with a view [995] to dedicating water in this neighborhood to use. I began to inquire of all the oldest residents here what the customs were, because I knew that there was no statutory law, and they told me and I followed their instructions, and finally I appropriated water in this country and dedicated it to use, and that is how I have had the experience.

Q. But you don't cross anybody's mining claim with it? A. Never did.

Q. Then, the knowledge you have of some custom that might have prevailed here is all from hearsay, is it not?

A. Mostly—mostly from hearsay. I have observed—

Q. Is it not all from hearsay—you haven't learned anything from practical experience?

A. Well, I have. I have located and aided in the location of another ditch and water right in this country.

Q. Did you cross somebody's mining claim with it? A. I don't think I did.

(Testimony of Benjamin Bullard.)

Judge WINN.—I move to strike out the entire evidence of the witness because he has never crossed anybody's claim and never knew that anybody did cross anybody else's claim, and if he knows anything of anybody crossing a claim it is from what somebody else told him.

Objection overruled. Plaintiff allowed an exception.

Q. Have you ever read any of the decisions of the courts in Alaska pertaining to this question of the rights to the use of water? A. Never have.

Q. Did you attend the trial of the case of Thorn-dyke et al. vs. the Perseverance Co., here?

A. I did not.

Q. You didn't testify in that case?

A. I did not.

Witness excused. [996]

[Testimony of George Hartrader, for Defendant.]

GEORGE HARTRADER, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Do you live in Juneau? A. Yes, sir.

Q. How long have you lived in Juneau?

A. Thirty years. I came here the fore part of April, 1881.

Q. Are you the same Hartrader who is known as the constructor and builder of the original Hartrader ditch back in the eighties?

A. The ditch you refer to belonged to the Tiger

(Testimony of George Hartrader.)

Company, but I was a member of the company.

Q. It is frequently spoken of as the Hartrader ditch?

A. The Hartrader ditch or the Coombs & Campbell ditch—we speak of it either way.

Q. What has been your business since living in this district?

A. My business has been principally mining.

Q. Do you know the customs of miners in the Harris mining district—you know where the Harris mining district is situated?

A. I know where it used to be—I don't know whether they have extended the boundaries or not.

Q. The stream known as Gold Creek, you know where that is? A. Yes, sir.

Q. This stream, Gold Creek, from its source to its mouth is entirely within the Harris mining district?

A. Yes, sir.

Q. Do you know the customs of miners in the Harris mining district and surrounding mining districts, that is to say, those districts situated within the Juneau gold belt and Southeastern Alaska, with reference to and governing the [997] appropriation of water and the acquisition of water rights?

(It is understood all this testimony goes in under plaintiff's objection as in testimony of Mr. Bullard. Objection overruled and plaintiff allowed exception.)

Q. Do you know the custom?

A. I do, to a great extent. I wouldn't say I know it all, but I do to a great extent.

Q. Under the custom of miners as you know it, has

(Testimony of George Hartrader.)

the owner of the banks of a running stream any right to the use of the water flowing in the stream without appropriating it and merely because he is the owner of the bank?

A. A man who owns the banks of a stream, he would have a perfect right to use the water in the stream.

Q. How can the right to the use of water in running streams be acquired in the districts to which you have testified, lying about Juneau, in the Juneau gold belt, under the customs of miners?

A. You post a notice at the place where you want to take the water from the creek and state in that notice where you want to carry it to and what purpose you want to use it for.

Q. Then what do you do after you post your notice?

A. You record it within a reasonable time—a good many years ago, I think it was twenty days.

Q. Then what do you do?

A. You go to work and complete your ditch and do your work on it in a diligent manner to complete it.

Q. Then what do you do in the way of applying the water to a beneficial use?

A. Run the water through the ditch and use it for the purpose it was intended to be used for. [998]

Q. What rights under the customs of miners in this locality has one seeking to acquire a water right by diversion and application to a beneficial use to build ditches, flumes, canals, aqueducts and intakes on the mining claims, whether quartz or placer, nec-

(Testimony of George Hartrader.)

essary for him to cross in order to divert the water and apply it to the beneficial use desired?

A. The way we done in the early days in the Basin we crossed over that man's claim with our water ditches and flume.

Q. Here is a map, which we will have marked Defendant's Exhibit 50 (it is so marked)—in a general way, does that correctly represent matters as you know them upon the ground in the locality of Silver Bow Basin? I mean with reference to the location of the creeks, Gold Creek and Icy Gulch, and Icy Creek, etc.

A. I can't say that I understand the map.

Q. In the construction of the Hartrader ditch, was it necessary to cross mining claims owned by others, by other parties? A. Yes, it was.

Q. Who owned the ground—the ditch took the water out of the Lurvey, did it not?

A. Out of what is known as Lurvey creek; yes, sir.

Q. Who owned the ground at the place where you took the water out?

A. I don't remember anyone at that time.

Q. Nobody at that time?

A. That was taken out in 1881.

Q. Do you remember the names of any of the parties that owned the water along the course of the ditch?

A. Our ditch crossed Kelly & Cadmus ground and the Bulger placer ground.

Q. Lower down, did it cross any other claims?

[999]

(Testimony of George Hartrader.)

A. Lower down, after it crossed Icy Gulch.

Q. Your ditch went below Icy Gulch?

A. Yes, down to Quartz Gulch and still on further.

Q. Whose ground did you cross?

A. I couldn't give you the names of more than one company—there was a man named Wyberg and a man named Peterson—we crossed their ground.

Q. Did you ask them for permission or pay them anything? A. No, sir.

Q. Were there any other ditches built in that neighborhood at that time? A. There was.

Q. Any built across mining ground owned by others than those who built the ditches?

A. Coombs & Campbell and myself built almost from Icy Gulch into Quartz Gulch and we crossed the Bulger-Hill Company's ground, and there was other ditches there—I couldn't say whether they cross other people's ground or not. The Bulger-Hill Company had a ditch, but I think it was pretty much on their own ground.

Q. How about the laterals that extended from your main ditch did they cross the ground of others—were there any lateral ditches built from the main ditch?

A. No, sir; not from our ditch, there wasn't.

Q. Under the customs of miners, as you understand them, does it make any difference with reference to the right to build ditches and canals and the like whether the ditches and canals are built across quartz or placer claims?

(Testimony of George Hartrader.)

A. We crossed both placer and quartz claims in building our ditches. [1000]

Q. Was your ditch built across any quartz claim?

A. Yes, sir.

Q. Whose quartz claim did you cross?

A. It crossed one I can mention—that belonged to a man named Mooney and Moore.

Q. Can you think of any others?

A. We crossed another quartz claim. I don't know who it belonged to now.

Q. Did you get any permission to cross those quartz claims or pay any damages or anything of that sort? A. No, sir.

Q. Do you understand the map now?

A. I think I do.

Q. Look at this map marked 50 and indicate whether the ditch there marked as the Coms & Hartrader ditch is about where your ditch was located? Does it look all right on the map, your ditch?

A. You haven't got all the water right in there, all the ditch in there—that is what fooled me; it looks all right.

Cross-examination.

(By Judge WINN.)

Q. When was that you built that ditch in question; how long ago?

A. We located the ditch in 1881, in August, and completed about 600 feet of it and completed the remaining part of it around Quartz Gulch in 1882.

Q. And that water was taken up and the ditch dug for the purpose of applying the water to placer min-

(Testimony of George Hartrader.)

ing? A. Placer mining.

Q. And where you took up the water, you took it up on United States Government land?

A. Yes, sir. [1001]

Q. You said there was nobody owned it?

A. Yes, sir.

Q. Did you post up a notice, do you remember?

A. Yes.

Q. Did you have it recorded?

A. Yes; you will find it on the record books, I think.

Q. What time did you post up your notice with respect to the time you commenced work on your ditch?

A. We commenced work on the ditch shortly after we posted the notice up—dug out about 600 feet from where it jumps off in what is called Jackass Gulch.

Q. You posted your notice up before the other people took up the mining claims your ditch crossed?

A. I couldn't say as to that.

Q. Your right was the oldest—older than any of the rest of them?

A. On that creek, yes, sir; I couldn't say whether the ditch was taken up before those other claims the ditch crossed was taken up or not, or the water right taken up, I mean.

Q. The only thing that water ditches in those times were used for up there was placer mining, wasn't it?

A. Yes, sir.

Q. There wasn't any quartz-mills in and about Juneau? A. No.

(Testimony of George Hartrader.)

Q. These people's ground that your ditch went across, they didn't say anything to you about it, and you didn't say anything to them about it—you just kept on building?

A. Kept on building right through.

Q. And you don't remember of any other ditches that were built up there by people who crossed other people's land with the ditch, do you?

A. No, sir; there wasn't any ditches there of any consequence. [1002]

Q. There wasn't any other ditches in Southeastern Alaska, then, of any consequence?

A. No, I don't think so.

Q. Since that time there has been a lot of quartz-mills built here—the Ebner, the Perseverance, the Treadwell, the Mexican, etc. You don't know anything about any custom that has prevailed with those companies in crossing other lands?

A. No, sir; I do not.

Q. You don't know of a single instance where either the Treadwell or any of those companies crossed anybody else's quartz claims, but what they had to pay for? A. No, I don't know.

Q. That was about the time of the founding of Juneau?

A. Shortly after—it was founded in 180.

Q. And you people had what you called a Miners' Association here then? A. Yes, sir.

Q. And you met and passed your by-laws and rules and regulations in that organization? A. Yes, sir.

Q. There wasn't anything ever said in those by-

(Testimony of George Hartrader.)

laws and regulations about the right to cross anybody's land?

A. I don't think there was. I don't remember of anything like that.

Q. And this case of yours is the only case you know of?

A. Yes, that is the only case I know of.

Q. How many placer mining camps were there in Southeastern Alaska in 1881 when you were doing this work up there?

A. I didn't know of any except this one here outside of Sitka— [1003] there was a little mining going on there.

Q. That was about the only mining that was going on in Southeastern Alaska at that time?

A. Yes, sir.

Q. This town was founded what year—when did the people commence settling here?

A. They commenced settling here in the spring of 1881. It was started in the summer of 1880.

Q. This association you had here then and the miner's rules and regulations, they referred to the kind of mining going on then—and that was placer mining? A. Placer mining. [1004]

[Testimony of Charles Boyle, for Defendant.]

CHARLES BOYLE, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Juneau.

Q. How long have you lived in Juneau?

(Testimony of Charles Boyle.)

A. Since 1886.

Q. What business have you followed since living in Juneau? A. Mining.

Q. Do you know where the Harris mining district is situated? A. Yes.

Q. Do you know where Gold Creek is?

A. Yes, sir.

Q. Gold Creek along its entire length is within that district? A. Yes.

Q. Do you know what the custom of miners is in the Harris mining district and other mining districts surrounding the town of Juneau and in the Juneau gold district in Southeastern Alaska with reference to the acquisition of water rights?

(Same objection to this line of testimony is made to that of preceding witness. Objection overruled and exception allowed.) A. Yes, sir.

Q. Now, under the customs of miners in this district, that is to say, the district just referred to, the locality just referred to, surrounding Juneau, can the right to the use of water of the running streams be acquired—what steps must be taken and who can acquire it?

A. You have got to take up a water right and you have a right to it if you want it—you have a right to it, to keep up a water right. [1005]

Q. How do you take it up under the custom of miners? A. You put up a notice and record it.

Q. And then what do you do?

A. You take and dig a ditch or flume or whatever way you can get it in to where you want it introduced.

(Testimony of Charles Boyle.)

Q. What right has anyone trying to get a water right to cross mining claims, either quartz or placer, that lie between the place where he wants to use the water and the creek from which he wants to take it, the place from where he wants to take it, to construct ditches and flumes and other means of diverting and confining the water?

A. The custom has always been to take the water—you could take it across a man's ground. If you couldn't get a ditch you would have to flume it across it.

Q. What right do you have to build dams and turn the water into ditches under the customs of miners on some other man's mining ground, quartz or placer?

A. You would have the right to raise the water to get it into the ditch.

Q. Could the man who owned the ground stop you from doing that, under the custom?

A. Not as I know of. I think it was customary always.

Q. How long has that custom prevailed in the mining localities to which I have referred, that is, the localities surrounding Juneau?

A. All the time, so far as I know.

Q. When you say all the time, how long do you mean—when did you come here? A. In 1886.

Q. Was that the custom then?

A. Yes, sir. [1006]

Q. Is that the custom yet?

A. Yes; it is the custom, as far as I know, yet.

(Testimony of Charles Boyle.)

Q. Is there any difference under the custom whether the claims crossed are quartz or placer?

A. No, placer was what came first. They were worked before there was any quartz, but the right always prevailed since, as far as I know.

Q. To cross quartz or placer either?

A. Yes, sir.

Q. A good many of the claims that in the early days were held as placer claims are now held as quartz claims? A. Yes, sir.

Q. You know where the ditches are that are built in Silver Bow Basin and in the neighborhood of Gold Creek that have been used for mining purpose, in the locality where the Ebner and Alaska-Juneau mills are? A. Yes.

Q. Do you know where the Coombs & Campbell ditch is? A. Yes.

Q. Do you know whether that ditch crosses ground other than that owned by Coombs & Campbell and Hartrader?

A. Yes, several—it crossed the head of the ground owned by Luke Nolan and his partner.

Q. Do you remember anybody else?

A. Pretty near the whole of that, it crossed right along the head of their claims—it crossed pretty near the most of them, all along.

Q. Would you say a large number of claims—how many, about?

A. There must be six or seven claims—they crossed Lynch's ground, too. [1007]

Q. Do you know where Coombs & Campbell have

(Testimony of Charles Boyle.)

another ditch? A. Yes.

Q. Did that cross anybody's ground except Coombs & Campbell's?

A. Yes, it crossed other ground.

Q. Do you know whether any of these mining claims were located before the ditch was built?

A. I think they were located before the ditch was built, most of them.

Q. Do you know of any other ditches that were built in Silver Bow Basin besides the Coombs & Campbell ditches to which you have testified?

A. The upper ditch of Hartrader and Coombs & Campbell. I know the ground was all located before that upper ditch was built.

Q. Whose ground did that ditch cross?

A. It crossed Campbells and Nolan's—Pete McClinchey's, Jimmy Farrell and Luke Nolan.

Q. Can you state whether these claims you have just mentioned were located before the water right ditch that you have last spoken of was located?

A. Yes, it was located before the ditch was there.

Q. What other ditches were built up in Silver Bow Basin that you know of?

A. There were three ditches built there.

Q. Any ditch from Snowslide Gulch?

A. Yes, from Icy Gulch as we call it—that is the one I have been testifying about.

Q. Any ditch over Snowslide Gulch?

A. Yes.

Q. Who built that? [1008]

A. I believe Nick Harris.

(Testimony of Charles Boyle.)

Q. Whose ground did that cross, if anybody's, do you know?

A. I don't know what it crossed now—it didn't cross anybody's ground then. Nobody claimed it then that I know of.

Q. What other ditches were built there that you know of—were there any other ditches from Snowslide up the hill?

A. No, not from Snowslide, except the Harris ditch.

Q. Do you know of any other ditches built there in the early days or since?

A. No; part of that ditch of Coombs was built before—that is abandoned.

Q. Do you know anything about the ditches built on Douglas Island? A. No.

Q. Or Sheep Creek either? A. No.

Cross-examination.

(By Judge WINN.)

Q. You also had some miners' rules and regulations that required in the location of placer claims and lode claims that they have to post up notices and record these notices too—that was a custom, was it not? A. Yes.

Q. You never did know of any man going on another man's mining claim and taking the water off of his mining claim, did you?

A. I know him to take it out of the stream.

Q. If you owned a placer claim up there, did you ever know of a man coming on the claim owned and taking the water out of the creek and taking it away

(Testimony of Charles Boyle.)

from your placer claim?

A. Not up here but I did in other places.

Q. But not in Alaska?

A. Because here the ground is so steep you haven't got to cut very much—you can take the water at any place. [1009]

Q. If you, for instance, owned a placer claim up in the Basin, you wouldn't have allowed any man to take the water off your placer claim down to his placer claim, under the customs?

A. Certainly, if the water was going to waste—

Q. If the water was going to waste, you would let him go on? A. Yes.

Q. And take it off of your claim? A. Yes.

Q. Can you mention any man that ever did that up in the Basin?

A. No; they have no right to get the water in that way; they could take the water from any place, the water was up above them all the time.

Q. You never knew of a man going on to another man's mining claim and taking the water off the mining claim belonging to another man?

A. No; but I know him to fetch it across his claim.

Q. You know when Hartrader located his water right he went up on Government land and located it—you heard his testimony? A. Yes.

Q. And when he went on to Government land and located it, then he took it across some other claims?

A. Yes.

Q. Who owned any quartz claims up there—do you know of anybody in those early days?

(Testimony of Charles Boyle.)

A. Well, Archie Coombs owned quartz claims in early days.

Q. Where is that with relation to any of the property up there now?

A. It is the same claim they are working now.

Q. That he is working?

A. The Alaska-Juneau is working—they own the claim Archie Campbell used to own up there. [1010]

Q. Did he work it as a quartz claim, Archie Campbell? A. Yes.

Q. Whose ditch crossed that claim?

A. The ditch of Hartrader and Coombs crossed it.

Q. Hartrader & Coombs took the water down to work on the placer claims? A. Yes, sir.

Q. What did you say the other ditch is that you knew up there in early days?

A. The first ditch was—there were three or four partners in it—Coombs was in it and Hartrader too.

Q. What creek did they take the water from?

A. The lower ditch was taken out of Icy Gulch.

Q. Where is that gulch up there with respect to the Perseverance or the Alaska-Juneau property?

A. It comes right straight down from the mountain—the Alaska-Juneau runs right up against it.

Q. That is where those people took it?

A. Yes.

Q. They went way up on the hillside and took up the water and then took a ditch around and across some other people's property? A. Yes, sir.

Q. They went on Government land and took up the

(Testimony of Charles Boyle.)

water too—went way up and got it on land nobody owned?

A. Of course, nobody owned it at that time.

Q. Nobody owned it at the time they took the water up? A. No.

Q. Now, what other ditch did you have up there?

A. We had this present ditch that is working now, the Alaska-Juneau [1011] —what they call the upper ditch.

Q. Is that the water that the Alaska-Juneau uses now in their mill? A. Yes, sir.

Q. Who first took up that water right?

A. That water right that belonged to that ditch is the water of the Perseverance Company as owned now. We passed other ditches that were abandoned which ran around the mountains and the bluff there.

Q. That is the ditch that took water out of Lurvey Creek? A. Yes, sir.

Q. The Alaska-Juneau is not using that water out of Lurvey Creek now?

A. No, they are getting water out of Icy Gulch, but in the early days the other two ditches below claimed the water in Icy Gulch,—they took it all.

Q. In early days this ditch also took the water out of Lurvey Creek? A. Yes, sir.

Q. Was that used by the Alaska-Juneau people a while?

A. No, by Cooms and Campbell and Hartrader.

Q. And that water is now used by the Perseverance Company and is called the Lurvey Creek water right?

A. Yes, sir.

(Testimony of Charles Boyle.)

Q. That is the one they had the big lawsuit over between Thorndyke's people and the others?

A. Yes, sir.

Q. Any other ditch? A. That is all.

Q. You never knew of any man that owned a mining claim making [1012] any objection—they just went across without asking for it—didn't say anything about it, just went across the property—do you know whether they had an agreement with the owners of the mining claim or not?

A. The owners were always talked to about it?

Q. They would give their consent to go across it?

A. Yes, that was the custom. We took the water whenever we wanted it.

Q. But they generally got the consent of the owner of the mining claim before they crossed it?

A. Certainly; it is natural enough to do that.

Q. The only thing that you know, then, about the custom is the custom that prevailed there in the early days when there was placer mining going on?

A. Yes, sir.

Q. You don't know how the Treadwell and the Mexican over here acquire their water rights or the Sheep Creek and Dick Lewis with his waterworks in town and Ebner and all those other waterworks—you don't know anything about? A. No.

Q. In those days the only property worked in southeastern Alaska was the property in Silver Bow Basin? A. Yes.

Q. The Treadwell hadn't started? A. No.

Q. Sheep Creek hadn't started? A. No.

(Testimony of Charles Boyle.)

Q. Ebner hadn't? A. No.

Q. Perseverance hadn't? A. No.

Q. Berners Bay hadn't started up? A. No.

Q. None of them? A. No.

(By Mr. HELLENTHAL.)

Q. Under the custom, could the owner of a piece of ground stop [1013] you from building a ditch across the ground?

A. Not as I know of—I don't think he could.

Q. Where is Luke Nolan's ditch—where did that take the water out of Icy Gulch?

A. He never had a ditch. He got water out of these other ditches.

Q. Who had a ditch there besides Hartrader, Coombs & Campbell? A. The Bulger Company.

Q. Across whose ground did that run—where did that take the water out?

A. Out of Icy Gulch.

Q. Where? On whose ground?

A. There was nobody claimed the ground at that time.

Witness excused.

[Testimony of Hugh Tracy, for Defendant.]

HUGH TRACY, a witness called and sworn in behalf of the defendant, testified as follows:

Direct Examination.

(By Mr. HELLENTHAL.)

Q. Where do you reside? A. Douglas.

Q. How long have you resided there?

A. About 25 years.

Q. When did you come to this country?

(Testimony of Hugh Tracy.)

A. In 1886.

Q. What has been your business ever since?

A. Prospecting and mining.

Q. How long have you been prospecting and mining?

A. More or less every year since I came. [1014]

Q. Do you know the custom of miners governing the acquisition of water rights as that custom obtains in the District of Alaska? I am speaking more especially of the mining districts surrounding Juneau.

(It is understood this testimony is subject to the same objection as similar testimony of the preceding witnesses. Objection is overruled and plaintiff allowed exception.)

A. Yes, I know something about it.

Q. How can a water right be acquired under the custom of miners as obtains in this Juneau gold belt?

A. Just simply go and take it up and use it.

Q. Do you post a notice?

A. Yes, you can. If you are right there to represent it all the time you don't need to—it is not necessary, as I know of.

Q. If you are working on it you don't need to?

A. I don't think you need to do anything. You let the people know you are there—you take the water out and use it. It is the best way to stick up a notice to show you mean all right and are going to use that water for such a purpose, so many inches—that would be very well.

Q. That would give them a water right?

A. Yes, sir.

(Testimony of Hugh Tracy.)

Q. What is the custom in the mining districts about Juneau with reference to the right of the water appropriator to cross the mining claims, quartz and placer, that belong to other people in order to build the necessary ditches, flumes, canals and dams, in order to make his diversion and appropriation of water?

A. Well, I think they all went right ahead and brought it across and said nothing about it—there was no fight made. Generally, we went right ahead and took the water across anybody's [1015] ground and there was no objection.

Q. Do you have a right to do this?

A. Under the custom, I think so.

Q. Do you know of any ditches that were constructed here in this district?

A. I know of them. I worked up in the Basin two years. I worked with Campbell & Coombs—they had the ditch all built when I went up there and we used it and they added to it and wherever it was broken, fixed it and got it running, where they wanted it—we never had any kicking about ditches one way or the other.

Q. Do you know where the Nowell ditch was built to take the water out of Glacier Creek?

A. No, Nowell wasn't up there when I was there. They bought out Coombs & Campbell or Campbell and came after.

Q. Do you know where the Treadwell ditch is built, in a general way, on Douglas Island?

A. Yes, sir.

(Testimony of Hugh Tracy.)

Q. How long a ditch is that?

A. I never was over it all. It seems to be all over the island now.

Q. Are there mining claims scattered all over the length of the ditch?

A. Yes, there are a great many.

Q. Do you know the owners of the claims across which the ditch flows?

A. No, sir. I know the Treadwell Company and the people that represent them, a good many of them—there may be others.

Q. The custom you have spoken of—does that ever change in the district? During the time you have been here, has the custom [1016] ever been any different from the custom you have related?

A. Not that I know of.

Cross-examination.

(By Judge WINN.)

Q. The only ditch you know anything about in Silver Bow Basin is what ditch?

A. This ditch he had was under Hartrader, Coombs & Campbell.

Q. You didn't go up there until after these ditches were constructed?

A. They had built them or partly built them before that.

Q. And those are the same ditches Charley Boyle testified to a while ago? A. Yes.

Q. And the same one that Hartrader testified to?

A. Yes; we used that water for mining there.

Q. You don't know what consent they got from

(Testimony of Hugh Tracy.)

the owners or anything of that kind to go across the property?

A. No; I never heard any kick in any way.

Q. You say those ditches were built when you went up there—you don't know anything about it from your personal knowledge how they got across that property? A. No.

Q. You live in Douglas? A. Yes, sir.

Q. Are you in the employ of the Treadwell Co.?

A. No.

Q. Have you been lately? A. No, sir.

Q. Now, about this Treadwell ditch you talked about—is that the one that crosses the hillside over the mountain and runs out here several miles?

A. Yes. [1017]

Q. You don't know when they located those water rights, the Treadwell people? A. No.

Q. They have from time to time been gathering up creeks and every kind or source of water, way on up several miles on the other end of the island, haven't they?

A. I couldn't say whether they took it all at one time or different times.

Q. You don't know whether they posted notices and recorded them or anything about it?

A. No, it was not my business—I didn't look for it. I very seldom go up there.

Q. Do you know anybody's mining claims that the ditch crosses? A. Yes, my own.

Q. When did you locate your claim?

A. Four or five years ago.